

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK, LLC,
8 Debtor.

9 - - - - - x

10 Adv. Case No. 22-01139-mg

11 - - - - - x

12 CELSIUS NETWORK LIMITED, et al.,
13 Plaintiffs.

14 Vs.

15 STONE, et al,
16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-01140-mg

19 - - - - - x

20 CELSIUS NETWORK LIMITED, et al.,
21 Plaintiffs.

22 Vs.

23 PRIME TRUST, LLC,
24 Defendant.

25 - - - - - x

1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
4

5 October 20, 2022
6 10:01 A.M.
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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE
24

25 ECRO: KS

1 HEARING re Hearing Using Zoom for Government RE: Motion of
2 Community First Partners, LLC, Celsius SPV Investors, LP,
3 Celsius New SPV Investors, LP, and CDP Investissements Inc.
4 for Entry of an Order Directing the Appointment of an
5 Official Preferred Equity Committee. (Doc# 880, 886, 897,
6 898, 924, 948, 1045, 1048, 1049, 1120, 1122)
7
8 HEARING re Debtor's Motion Seeking Entry of an Order (I)
9 Approving the Bidding Procedures in Connection with the Sale
10 of Substantially All of the Debtors Assets, (II) Scheduling
11 Certain Dates with Respect Thereto, (III) Approving the Form
12 and Manner of Notice Thereof, (IV) Approving Contract
13 Assumption and Assignment Procedures, and (V) Granting
14 Related Relief. (Doc# 929, 1040, 1046, 1047, 1051, 1054,
15 1056, 1059, 1063, 1065, 1077, 1080, 1109, 1110, 1113)
16
17 Hearing Using Zoom for Government RE: Motion to (A) Continue
18 to Operate Their Cash Management System, (B) Honor Certain
19 Prepetition Obligations Related Thereto, (C) Maintain
20 Existing Business Forms, and (D) Continue to Perform
21 Intercompany Transactions, (II) Granting Superpriority
22 Administrative Expense Status to Postpetition Intercompany
23 Balances, and (III) Granting Related Relief (Doc## 21, 56,
24 401, 448, 479, 513, 592, 626, 643, 699, 720. 927, 1108,
25 1113)

1 HEARING re Hearing Using Zoom for Government RE: Debtor's
2 Motion for Entry of an Order (I) Extending the Time to File
3 Notices of Removal of Civil Actions and (II) Granting
4 Related Relief. (Doc# 987)

5
6 HEARING re Hearing Using Zoom for Government RE: Examiner's
7 Motion for an Order Authorizing the Examiner to Conduct
8 2004 Examinations (Doc. ## 959, 963, 1000, 1078, 1087, 1104,
9 1105).Going forward Only if Order to Shorten
10 Time (Doc no. 1000) is granted.

11
12 HEARING re Adversary proceeding: 22-01139-mg Celsius Network
13 Limited et al v. Stone et al Pre-trial Conference Using Zoom
14 for Government. (Doc ## 1, 2, 4, 8, 9, 13)

15
16 HEARING re Adversary proceeding: 22-01140-mg Celsius Network
17 Limited et al v. Prime Trust, LLC Pre-trial Conference Using
18 Zoom for Government. (Doc ## 1 to 3, 7, 8, 11)

19
20 HEARING re Adversary proceeding: 22-01140-mg Celsius Network
21 Limited et al v. Prime Trust, LLC Doc# 1146 Amended Notice
22 of Agenda for the Hearing to be held October 20, 2022, at
23 10:00 a.m. (prevailing Eastern Time)

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25

1 HEARING re Adversary proceeding: 22-01140-mg Celsius Network
2 Limited et al v. Prime Trust, LLC Requesting Holders Motion
3 for Entry of an Order Authorizing the Filing of Certain
4 Information Under Seal in Connection with the Reply in
5 Further Support of The Requesting Holders Motion for entry
6 of an Order Directing the Appointment of an Official
7 Preferred Equity Committee. (Doc# 1118, 1123)

8
9 HEARING re Adversary proceeding: 22-01140-mg Celsius Network
10 Limited et al v. Prime Trust, LLC Requesting Holders Motion
11 to Shorten Notice on Their Motion for Entry of an Order
12 Authorizing the Filing of Certain Information Under Seal in
13 Connection with the Reply in Further Support of The
14 Requesting Holders Motion for Entry of an Order Directing
15 the Appointment of an Official Preferred Equity Committee
16 (Doc## 1118, 1119, 1124)

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1 P R O C E E D I N G S

2 CLERK: Starting the recording for October 20,
3 2022 at 10:00 a.m. Calling Celsius Network, LLC, Case No.
4 22-10964; Celsius Network, Limited v. Stone, et al, Case No.
5 22-01139; and Celsius Network Limited v. Prime Trust, LLC.,
6 Case No. 22-01140.

7 All right. I see we have some of the conference
8 rooms. Is anyone in the conference rooms yet that are
9 making an appearance this morning? All right. Sorry, I
10 can't hear you.

11 MS. STADLER: Hi, it's Katie Stadler.

12 CLERK: Hello. Good morning, Katie. If you could
13 just give your appearance for the record, please.

14 MS. STADLER: Katherine Stadler, Godfrey Kahn,
15 appearing on behalf of the proposed fee examiner.

16 CLERK: Thank you very much. And is Chris Sontchi
17 also appearing this morning?

18 MS. STADLER: He will be, yes.

19 CLERK: All right, thank you.

20 MS. STADLER: And can I ask you a question because
21 I have the naming convention that Judge Swain asks for in
22 the Puerto Rico proceeding. And normally, I'm able to
23 change that, but it's showing up with my same screen name.
24 Oh, there's Judge Sontchi.

25 CLERK: Okay. So you should be able to -- there

1 should be three dots next to your name and you should be
2 able to click rename. Is that what you were asking about?

3 MS. STADLER: Oh, yes.

4 CLERK: If not, I can take care of that for you.

5 MS. STADLER: I got it. So he just wants first
6 name, last name?

7 CLERK: Yes, please.

8 MS. STADLER: Okay, there we go.

9 CLERK: Perfect. Thank you so much.

10 MS. STADLER: Thank you.

11 CLERK: Chris, Mr. Sontchi, if you could unmute
12 and give your appearance. I just want to make sure your
13 microphone works?

14 MR. SONTCHI: Good morning. This is Christopher
15 Sontchi, the proposed fee examiner.

16 CLERK: All right, so you're unmuted, Chicago 6M.
17 Which conference room are you here for?

18 MR. KOENIG: Good morning. It's Chris Koenig from
19 Kirkland & Ellis on behalf of the Debtors. Can you hear me
20 okay now, Deanna?

21 CLERK: Yes, I can. Thank you, Chris.

22 MR. KOENIG: Thank you. We were having some
23 technical difficulties. We'll go on mute now.

24 CLERK: Okay. Just a quick question. Are the
25 other parties from Kirkland joining through that conference

1 room or are they joining separately?

2 MR. KOENIG: I believe everybody that's speaking
3 this morning, Deanna, will be in this conference room. It's
4 going to be me and my partner, Dan Latona, I believe.

5 CLERK: Thank you.

6 MR. KOENIG: Thank you. There will be another
7 conference room that needs to be admitted to the conference,
8 but they won't have a speaking role this morning.

9 CLERK: Understood.

10 MR. KOENIG: Thank you.

11 CLERK: All right. I see someone signed up as
12 Kirkland & Ellis. Could you please identify who you are?
13 All right. Dean Chapman, if you could unmute and give your
14 appearance for the record, please?

15 MR. CHAPMAN: Yeah, good morning. Dean Chapman
16 from Akin Gump Strauss Hauer & Feld for the Celsius Debtor
17 plaintiffs in the two pretrial conferences that are set for
18 today.

19 CLERK: Okay. And you're appearing on behalf of
20 Celsius Network, LLC as special litigation counsel?

21 MR. CHAPMAN: That's correct.

22 CLERK: All right, thank you.

23 MR. CHAPMAN: And I see my partners, Mitch Hurley
24 and Lizzy Scott on here as well.

25 MR. HURLEY: Good morning. Yeah, so that's Mitch

1 Hurley with Akin Gump. And like Mr. Chapman, I'm going to
2 be appearing on behalf of the Debtors in connection with the
3 two pretrial conferences.

4 CLERK: Thank you.

5 MR. HURLEY: Thank you.

6 CLERK: Elizabeth, I just want to make sure you
7 can unmute and speak if necessary.

8 MS. SCOTT: Good morning, yes. Elizabeth Scott,
9 also with Akin and also special litigation counsel for the
10 pretrial conferences.

11 CLERK: Thank you. Someone's joined as Kirkland &
12 Ellis. Could you just rename yourself, please, or I could
13 rename you if necessary.

14 MAN 1: That's just the preview room and it's a
15 secondary room for the people who are just viewing and not
16 speaking. Same group as this group.

17 CLERK: All right. I'll just put listen only.
18 Thank you.

19 MAN: 1 Thank you.

20 CLERK: All right. Keith Wofford, if you could
21 unmute and give your appearance for the record, please.

22 MR. WOFFORD: Hello, good morning. Keith Wofford
23 from White & Case on behalf of the Official Committee.

24 CLERK: Okay. Thank you very much. Mr. Turetsky,
25 David.

1 MR. TURETSKY: Good morning. David Turetsky of
2 White & Case on behalf of the committee.

3 CLERK: Okay, thank you.

4 MR. TURETSKY: Thank you.

5 CLERK: Now who is going to be speaking first on
6 behalf of the committee; do you happen to know, either of
7 you?

8 MR. TURETSKY: It will be Greg Pesce and Aaron
9 Colodny.

10 CLERK: All right, thank you.

11 WOMAN 1: Deanna, can you make me cohost, please?

12 CLERK: Yes. I will in a moment, Jessica.

13 WOMAN 1: Thank you.

14 CLERK: You're welcome. All right, Aaron, if you
15 could unmute and give your appearance, please. Just trying
16 to make sure your line works.

17 MR. COLODNY: Aaron Colodny, White & Case for the
18 Official Creditors' Committee.

19 CLERK: Thank you.

20 MR. COLODNY: And I'm going to be sharing the
21 demonstrative today. Is the share screen feature
22 operational on my computer?

23 CLERK: All right. So what you'll do is just give
24 me a que, tell me that -- or if someone could just tell me
25 that you're ready to start sharing, and then I will make you

1 a cohost and you will be able to share.

2 MR. COLODNY: Okay. I think Greg will do it when
3 he's giving the argument.

4 CLERK: All right. Pardon?

5 MR. COLODNY: I think Greg Pesce will do it when
6 he's giving the argument, give you the que, and then I'll be
7 the one that share his screen.

8 CLERK: Okay. Thank you very much.

9 MR. COLODNY: Thank you.

10 CLERK: All right, Mr. Frishberg, have you joined?
11 All right.

12 For the parties that have joined, if you're going
13 to be speaking on the record this morning and have not yet
14 given your appearance, please unmute and give your
15 appearance at this time, one at a time.

16 Good morning, Gregory. If you could just give
17 your appearance just to make sure your microphone works.

18 MR. PESCE: Sure. Gregory Pesce, White & Case, on
19 behalf of the committee. And I don't know if my colleagues
20 have joined, but Aaron Colodny and Sam Hershey will also be
21 speaking for the committee today.

22 CLERK: All right. Mr. Colodny, Mr. Turetsky, and
23 Mr. Wofford all gave their appearance.

24 MR. PESCE: Super.

25 MR. COLODNY: And then, Greg, whenever it's time

1 to do the demonstrative, just give the cue and they'll give
2 me powers to put it up.

3 MR. PESCE: Great, thanks.

4 CLERK: All right. For the parties that have
5 joined, if you are speaking on the record this morning and
6 you have not given your appearance yet, please unmute and
7 give your appearance at this time.

8 MS. ROOD: Jennifer Rood, Vermont Department of
9 Financial Regulation.

10 CLERK: Thank you, Jennifer. All right, Daniel
11 Frishberg, are you going to speaking this morning?

12 MR. FRISHBERG: Yes, I will be. Daniel Frishberg,
13 pro se filer. Thank you.

14 CLERK: Thank you very much.

15 MR. STEEL: Good morning. It's Howard Steel,
16 Goodwin & Procter, on behalf of Prime Trust.

17 CLERK: Okay. Thank you, Howard. All right,
18 Deborah Kovsky, are you going to be speaking this morning.

19 MS. KOVSKY: Hi, Deanna. I don't anticipate it
20 unless the judge has a specific question relating to the
21 withhold group.

22 CLERK: All right. Thank you very much. Good
23 morning, Shoba. If you could unmute and give your
24 appearance, please. Again, Shoba Pillay, are you speaking
25 this morning?

1 MS. PILLAY: Good morning. If the Court has any
2 questions for me, I'm happy to address them, but I have
3 nothing specific to raise.

4 CLERK: Okay. And then Catherine, is she joining
5 as well?

6 MS. PILLAY: Catherine from -- she might be. I
7 think Vince Lazar is joining. I'm not sure about Cathy.

8 CLERK: Okay, thank you.

9 MS. PILLAY: Thank you.

10 CLERK: All right. Kevin, please pause the
11 recording for now.

12 Good morning, Samuel. If you could unmute and
13 give your appearance just to make sure you can speak this
14 morning if you need to.

15 MR. HERSHEY: Sam Hershey from White & Case on
16 behalf of the Official Committee of Unsecured Creditors.

17 CLERK: Thank you. Are there any additional
18 parties that have joined that have not given their
19 appearance and are speaking on the record this morning?

20 MR. HERRMAN: Immanuel Herrmann, pro se Celsius
21 creditor. I plan to object to 1119, the expedited -- the
22 motion to shorten for the motion to seal, and then I'll
23 probably speak on 929.

24 CLERK: Okay. So when the judge gives parties the
25 ability to speak, just a reminder if everyone could raise

1 their hands and he'll get to each party one at a time.

2 He'll ask you each to unmute. Thank you.

3 Please pause the recording.

4 Good morning, Vincent. If you could unmute and
5 give your appearance for the record, please.

6 MR. LAZAR: Good morning. Vincent Lazar on behalf
7 of the examiner.

8 CLERK: All right. Is Carl Wedoff also joining?

9 MR. LAZAR: Yes, I believe Carl is joining.

10 CLERK: Okay, thank you. All right. Are there
11 any additional parties that have been admitted that are
12 speaking on the record this morning but have not given their
13 appearance?

14 MR. MESTER: Good morning. It's Josh Mester from
15 Jones Day on behalf of CDP Investments, Inc.

16 CLERK: Thank you very much.

17 All right. Please pause the recording for now.

18 Good morning. Mark Bruh, are you there?

19 MR. BRUH: Yeah. Good morning, Deanna. I'm
20 getting on right now.

21 CLERK: Okay, thank you. I can see you.

22 MR. BRUH: Okay, thank you. Bye-bye.

23 CLERK: All right. So Mark Bruh appearing on
24 behalf of the U.S. Trustee. Mark, are Shara Cornell or
25 Linda Riffkin going to be joining?

1 MR. BRUH: Shara, Miss Cornell, will definitely be
2 joining the hearing. I don't know about Miss Riffkin.

3 CLERK: Okay, thank you.

4 MR. BRUH: Okay.

5 CLERK: All right. For the participants that have
6 joined, if anyone is speaking on the record this morning and
7 has not given their appearance yet, please unmute your line
8 and give your appearance, please.

9 Hello, Brian Masumoto, are you just --

10 MR. MASUMOTO: Good morning. This is Brian
11 Masumoto.

12 CLERK: All right. Are you speaking?

13 MR. MASUMOTO: I'll probably be listening. I
14 don't anticipate speaking at this time.

15 CLERK: Okay. Thank you, Brian. Please pause the
16 recording. All right. Are there any parties that have not
17 given their appearance yet but are speaking on the record?

18 MS. MILLIGAN: Good morning. This is Layla
19 Milligan with the Texas Attorney General's Office.

20 CLERK: All right. Thank you, Layla. Is Abigail
21 Ryan also joining?

22 MS. MILLIGAN: I believe she may be joining, but I
23 will be presenting comments on our behalf today.

24 CLERK: Thank you. All right, Linda Riffkin, I
25 see you also joined. It's my understanding you're not

1 speaking this morning; is that correct?

2 MS. RIFFKIN: That's correct.

3 CLERK: Thank you.

4 MR. ADLER: Hi, Deanna. It's David Adler from
5 McCarter & English on behalf of certain borrowers. I don't
6 expect to be speaking today, but I thought I should put in
7 my appearance just in case.

8 CLERK: Thank you, appreciate that. All right,
9 please pause the recording.

10 Andrew Leblanc, are you speaking this morning on
11 the record?

12 MR. LEBLANC: Likely, yes, although Mr. Dunne from
13 Milbank will be joining momentarily, and he'll take the lead
14 for us.

15 CLERK: Okay. If you could just state who you're
16 appearing on behalf of.

17 MR. LEBLANC: Yes. Andrew Leblanc of Milbank on
18 behalf of certain preferred equity holders, Community First
19 Partners, Celsius SPV investors, and Celsius new SPV
20 investors.

21 CLERK: Thank you.

22 THE COURT: Deanna, are you able to hear me?

23 CLERK: Yes, I am, Judge.

24 THE COURT: Thank you.

25 CLERK: All right. Are there any additional

1 participants that have joined that are speaking on the
2 record this morning but have not given their appearance yet?

3 Good morning, Shara.

4 MS. CORNELL: Good morning. How are you?

5 CLERK: Good. Are you listening this morning or
6 speaking?

7 MS. CORNELL: I'm speaking this morning. Shara
8 Cornell on behalf of the Office of the United States
9 Trustee.

10 CLERK: All right, thank you.

11 MS. CORNELL: Thank you. I appreciate it.

12 CLERK: Are there parties that have joined that
13 have not given their appearance and are speaking this
14 morning? All right. And any participants that have joined
15 that are speaking on the record this morning and have not
16 given their appearance yet?

17 MR. DUNNE: Yes, hi. It's Dennis Dunne from
18 Milbank. I will be speaking today on behalf of Community
19 First Partners.

20 CLERK: All right, thank you.

21 MR. KOTLIAR: Hi, good morning. I haven't given
22 my appearance yet. This is Brian Kotliar of Togut, Segal &
23 Segal. I don't expect to speak, but if something comes up,
24 then I may have to.

25 CLERK: All right, thank you. And then I believe

1 Kyle Ortiz joined as well.

2 MR. ORTIZ: Good morning, Ms. Anderson, yes. And
3 like my colleague, don't anticipate needing to speak and
4 hope to be in listen mode today.

5 CLERK: All right, thank you.

6 MR. ORTIZ: Thank you.

7 MS. COHEN: This is Hollace Cohen of Fisher &
8 Broyles on behalf of Vincent Goetten. I am one of the
9 objectors, so I expect to perhaps say something.

10 CLERK: All right. Thank you very much. For
11 anyone that is going to respond or wants to speak, if you
12 could just use the raise hand function when that matter is
13 actually being considered and when the judge is taking --
14 allowing parties to speak at that time, and then he will
15 orderly allow each party to answer.

16 Everyone, I'm trying to do two things at once,
17 so...

18 All right. Are there any additional parties that
19 will be speaking on the record that have not given their
20 appearance yet? Once again, any participants that have
21 joined that are speaking on the record and have not given
22 their appearance yet?

23 MR. ROCHE: Kyle Roche on behalf of KeyFi and
24 Jason Stone.

25 CLERK: All right. And you're appearing in which

1 case? If you could just specify the case and who you're
2 appearing on behalf of.

3 MR. ROCHE: Yes. The case is the adversary
4 proceeding, Celsius Network v. Jason Stone and KeyFi, Inc.,
5 and I'm appearing on behalf of Jason Stone and KeyFi, Inc.

6 CLERK: Thank you very much. All right. Any
7 other parties that have joined and have not given their
8 appearance yet and are going to speak? All right.

9 I see some parties joined from the Federal Trade
10 Commission. Are you going to be speaking, Katherine?

11 MS. AIZPURU: I apologize, Ms. Anderson, I was
12 muted. This is Katherine Aizpuru from the Federal Trade
13 Commission. We don't anticipate speaking today.

14 CLERK: All right, thank you. All right. Has
15 counsel joined on behalf of Prime Trust yet?

16 MR. STEEL: Good morning, Deanna. It's Howard
17 Steele, Goodwin, for Prime Trust.

18 CLERK: Okay. And is Jamie Lathrop going to be
19 joining?

20 MR. STEEL: No, just me.

21 CLERK: Okay, thank you.

22 MR. STEEL: Thank you.

23 CLERK: All right. Is there anyone that we're
24 waiting for to anyone's knowledge that has not joined and
25 will be speaking today? All right. Please pause the

1 recording for now.

2 We're going to get started. Just a brief
3 announcement before we do. Parties are strictly prohibited
4 from making any recording of court proceedings, whether by
5 audio, video, screenshot, or otherwise. Violation of this
6 prohibition may result in the imposition of monetary and
7 non-monetary sanctions. The clerk of the court maintains an
8 audio recording of all proceedings, which constitutes the
9 official record.

10 Judge, would you like to begin?

11 THE COURT: Yes, I would. Thank you very much and
12 good morning, everybody. We have a rather full agenda this
13 morning. What I would like to do, I'm going to set some
14 time parameters for several of the motions today. As in the
15 past hearings, I would like to try and give an opportunity
16 for those who want to be heard to speak, but that may not be
17 possible today.

18 So there have been many, with respect to some of
19 the motions, there have been many pleadings that have been
20 filed, objections or limited objections. And what I want to
21 make sure we avoid is duplication of argument, so I may well
22 request argument from various people along the way and we'll
23 see whether we can fit further argument within the time
24 parameters.

25 So before getting to what's in the agenda, there

1 have been several matters that have been attempted to be
2 added to the agenda, but have not followed the procedures
3 required, specifically with respect to Mr. Frishberg's
4 motions, he's filed several, and he's requested that the
5 Court shorten time for those motions to be heard today. I
6 believe my courtroom deputy was going to try and
7 communication with Mr. Frishberg yesterday for these
8 hearings. His request to shorten time is denied.

9 If he wishes to have matters heard, he will have
10 to follow the procedure that everyone else does, which is
11 namely to speak with my courtroom deputy, request a hearing
12 date, has to follow the required notice periods, so his
13 motions will be heard in due course if they're properly
14 noticed, but they will not be heard today.

15 Secondly, I've seen the request to add to the
16 agenda, a request for the appointment of a fee examiner, and
17 my understanding is that the Debtor and the committee and
18 the U.S. Trustee have reached an agreement with respect to
19 that issue, so I do want to take that up as well. We'll
20 take it up after -- and I see Mr. Sontchi, who is the
21 proposed fee examiner.

22 We'll take that up after I hear -- I want to start
23 with the motion for the appointment of the official
24 preferred equity committee. We'll then move to the bidding
25 procedures motion. With respect to the motion to appoint

1 the official preferred equity committee, I've reviewed all
2 of the papers. I'm going to limit the argument on that
3 motion to 20 minutes: 8 minutes in support, 10 minutes in
4 opposition, and 2 minute reply. I think both the Debtor and
5 the -- well, excuse me -- the Debtor and the committee have
6 opposed it.

7 Mr. Dunne, are you arguing in support of the
8 motion?

9 MR. DUNNE: Yes, I am, Your Honor.

10 THE COURT: So why don't you begin.

11 MR. DUNNE: Okay. For the record, good morning,
12 Your Honor, Dennis Dunne of Milbank on behalf of Community
13 First Partners. And we are here this morning, as Your Honor
14 indicated, on our motion for the Court to appoint an
15 official committee of preferred equity holders under Section
16 1102.

17 The Williams case sets out the standard. I'm not
18 going to go through the factors now, but I think that we
19 have satisfied each of the factors, which I'll get to after
20 just a brief recitation of what I think are the salient
21 facts: (a) Celsius is a complicated case with an elaborate
22 business structure. It is presenting and will present novel
23 issues for the Court to address. And more specifically, the
24 case is unusual because there's no debt for borrowed money
25 on its balance sheets. There's no bank debt, no bond debt.

1 The creditors are mostly -- not completely -- but mostly the
2 customers and the preferred equity was effectively the debt,
3 but it came in as preferred equity.

4 These dynamics create kind of the spoke threshold
5 issues for Your Honor that need to be decided and require a
6 fast and fair resolution. An official committee for the
7 preferred stockholders will ensure an effective adversarial
8 process, which I will describe in a minute.

9 The company's prepetition balance sheet and
10 financial statements all showed the value of the mining
11 entity, the loan portfolio in GK8 flowing to the preferred
12 equity, untouched by customer claims which reside in the
13 customer entity, Celsius Network, LLC.

14 That reality is under siege now, Your Honor, by
15 several positions espoused by the customer committee in
16 which the Debtors' advisors may or may not agree with, but
17 the official committee is, for all intents and purposes, a
18 customer committee that are parties in and strong advocates
19 for the customers and they need a counterweight that is
20 cloaked in the mantle of fiduciary duties to have adequate
21 representation for the preferred, as well as an effective
22 joining of the issues.

23 This case is also different than Voyager down the
24 hall from you, Your Honor. It's more complex than the other
25 crypto cases. Unlike Voyager, Celsius owns business lines

1 and assets apart from the customer deposits and there's four
2 principal examples of it. You have the customer entity, but
3 in addition, you have the long portfolio, the mining rigs,
4 and GK8, which is an Israeli self-custody business.

5 The investments of the Series B preferred equity
6 was made approximately six months prior to the filing. The
7 holding company, the U.K. entity, raised over 690 million
8 from approximately 30 investors, more than half of whom are
9 individual, Your Honor.

10 And the equity valuation -- this is important for
11 representation purposes -- at the time was nearly \$3.5
12 billion, meaning the nearly \$700 million investment was not
13 a purchase of control of the company, so the founders remain
14 in control of the company, of the board, the common stock,
15 corporate governance.

16 To date, Your Honor, the preferred equity
17 securities have not received a penny back on their
18 investment: no dividend, no return of capital, not a cent.

19 The investment was focused not on the depositor
20 business or value of the customer entity, but on the
21 buildout of the mining company and the acquisition of GK8,
22 and the value of those flowed up to the U.K. parent without
23 hitting the customer claims. And I say this because it's
24 not a contention of an advocate for the preferred equity in
25 a Chapter 11, it's more than that; it's the position of the

1 company prior to the filing. All financial statements, SEC
2 submissions, and representations to investors were
3 consistent with this.

4 The complexity of the case. No one disputes that
5 this case is complex, so I think that that prong's
6 satisfied, but I'd move on to the next one, which is we're
7 not adequately represented by the key stakeholders in the
8 case.

9 Judge Wiles recently denied an official equity
10 committee in Revlon, and he did so because he thought that,
11 in part --

12 THE COURT: I think that was Judge Jones. That
13 was Judge Jones in Revlon.

14 MR. DUNNE: I'm sorry, Your Honor, you're right.
15 And, in part, because the efforts of the Debtors and the UCC
16 there would benefit equity. How? Those estate fiduciaries
17 were looking for ways to unlock value and increase the
18 amount of assets in the estate.

19 That is simply not the case here. This case is
20 more about allocation of value than maximization efforts,
21 and the official committee here is extremely partisan and
22 for the customers. I say that because, to its credit, they
23 don't shy away from that fact; they embrace it. They are
24 looking to, in fact, load up one type of unsecured claim at
25 all the entities at the expense of others.

1 We represent official committees all the time,
2 Your Honor, and, you know, you struggle with the conflicting
3 fiduciary duties; meaning, if you were a taxing authority
4 with unsecured claims against the entire corporate family or
5 an employee with unsecured claims with the U.K., you'd be
6 surprised to hear that your fiduciary believes all the
7 customer claims rank pare with your claims at every entity.

8 THE COURT: Mr. Dunne, the fact that the Debtor
9 may and the committee will take a position contrary to the
10 one that you seek to take on behalf of the preferred
11 holders, that doesn't automatically entitle you to a
12 preferred equity committee, does it?

13 MR. DUNNE: No. I'm raising this to say that very
14 often, Your Honor --

15 THE COURT: I mean, you're obviously a very able
16 advocate. I have no doubt that with or without a committee,
17 I will hear from you and have very serious arguments raised.
18 You know, the Debtor so far has indicated that in indicating
19 that all customer claims are against each entity, they're
20 reserving their rights and make clear that that isn't
21 necessarily their position down the road. It may well be
22 for the creditors' committee. But the fact that there are
23 disputes as to which entity the unsecured creditors' claims
24 may lie does not equate into the need for another committee.

25 MR. DUNNE: Let me address that in two ways, Your

1 Honor. One is that (a) it's unusual for the estate
2 fiduciary to be making these types of parochial arguments.
3 Why? Because in the typical Chapter 11, you'd have bond
4 debt that would be there and those conflicting fiduciary
5 duties would circumscribe the action.

6 The second reason, and I want to get into this
7 more importantly, is the level of engagement that we've had
8 to date, right? The Debtors have also said on the record
9 they expect to work in partnership with the customers and
10 the customer committee. They've never said that about us.
11 They have --

12 THE COURT: Are you feeling slighted, Mr. Dunne?

13 MR. DUNNE: We feel that definitely we would have
14 adequate representation if we were an estate fiduciary
15 because we wouldn't be disregarded like -- let me give two
16 examples. The UCC announced on the record a few hearings
17 ago that they had been in conversation with the Debtors and
18 the Debtors intended to schedule the customer claims at
19 every entity.

20 THE COURT: And they reserved all of their rights
21 with respect to the issue of whether the customer claims
22 properly should be allowed against each entity. I mean,
23 they have not -- has the Debtor taken a position?
24 Certainly, it's contrary to the position they've taken in
25 everything I've read.

1 MR. DUNNE: They did reserve the right. The point
2 I'm getting at, Your Honor, is that (a) if we were a
3 fiduciary, they would have talked to us before they made
4 that announcement. You can say, okay, but they reserved
5 anyway. But the answer is we would be in a much more
6 expedited position. Why? We gave them a bunch of counter-
7 factials after hearing about that; that they should have
8 considered, you know, weeks earlier. That would have led
9 them to tee up these issues in a way that we know it has to
10 be adjudicated weeks earlier. And the lack of, you know,
11 formal official committee status is resulting in unnecessary
12 delays while we're --

13 THE COURT: I'll give you another two minutes, Mr.
14 Dunne. Are there any other -- are there any cases that you
15 want me to look at? But, I mean, I've read all the papers
16 at this point. I understand the issues that you've raised
17 about the appointment of an preferred equity committee, and
18 I understand the arguments that have been made by the Debtor
19 and the committee.

20 Is there something that's not in the papers that
21 you want to raise?

22 MR. DUNNE: What I view is different here, Your
23 Honor, is that this isn't a case where, you know, the equity
24 -- the preferred equity is coming before Your Honor and
25 saying, yes, we're behind billions of dollars of debt for

1 borrowed money and we expect that the valuation at the end
2 of the day is going to put us in the money.

3 We believe we're in the money today and all the
4 prepetition documents showed it and that what's happening is
5 that there's actions being taken (crosstalk) --

6 THE COURT: Isn't the question under the case law
7 whether the position that you are taking is really
8 adequately represented by you and perhaps others
9 representing preferred equity. I mean, they're a major
10 economic stakeholder with absolutely first-rate counsel who
11 are not going to be shy about asserting their positions,
12 whether in the form of objections to motions or adversary
13 proceedings, whatever. I mean, your constituency is very
14 well represented and may ultimately prevail, Mr. Dunne.

15 The issue is whether a committee is needed to be
16 able to assert that position.

17 MR. DUNNE: I know we're running out of time.
18 I'll just address that last point, Your Honor, in two ways.
19 One, we cited a number of cases where official committees
20 were appointed, notwithstanding the fact that everything
21 you've said was true, that there was experienced
22 sophisticated counsel representing a subset of the
23 stockholders, Kodak being one of them.

24 Here, it's not necessarily true that all the
25 individual stockholders and more than half of the preferred

1 are held by individuals will necessarily benefit from our
2 work. They may if we litigate to the end. It may be that,
3 you know, we decide to go in a different direction, or you
4 cut a settlement that might not result in class-wide
5 distributions, and they would benefit from it. That's my --

6 THE COURT: I have your arguments, Mr. Dunne. Let
7 me hear from the other side.

8 MR. DUNNE: Okay. Thank you, Your Honor.

9 THE COURT: I'm giving a total of 10 minutes and
10 it's going to be how -- Mr. Pesce, have you talked with the
11 Debtors about who wants to take the main argument on this?
12 Whoever wants to go first, but I'm only allocating a total
13 of 10 minutes for it.

14 MR. KOENIG: Your Honor, it's Chris Koenig for the
15 Debtors from Kirkland & Ellis. Can you hear me okay?

16 THE COURT: Yeah, go ahead, Mr. Koenig.

17 MR. KOENIG: Your Honor, I'll endeavor to be brief
18 so that Mr. Pesce has time to argue as well.

19 Your Honor, you clearly have read the briefs in
20 great detail, so I just want to focus on the issue of
21 adequate representation. We object to the appointment of
22 the committee. We believe that they're already adequately
23 represented.

24 Section 1102 requires that the appointment be
25 necessary. The case law is clear that this is a difficult

1 standard to meet. I'd point Your Honor to Oneida where the
2 Court explained that the standard is that the equity holders
3 must be unable to represent their interests in the
4 bankruptcy case without an official committee.

5 Likewise, the Kodak and Spansion courts made clear
6 that even if there was a factual finding that the debtors
7 and the creditors' committee were not representing equity
8 holders, as Mr. Dunne is argument, those courts nonetheless
9 found that the ad hoc committee of equity holders is well
10 organized, well represented by counsel, and adequate to the
11 task of representing its interests without official status.
12 That same analysis should be applied here.

13 The movants hold a super-majority of the Series B
14 preferred, 87 percent. The movants are sophisticated
15 investors. They're represented by two global law firms that
16 routinely represent clients in the largest and most complex
17 Chapter 11 cases, and they've been involved in these cases
18 from the very beginning.

19 Mr. Dunne has appeared at numerous hearings. He
20 and his colleagues have sent comments to numerous orders,
21 including the mining Bitcoin order, the cash management
22 orders, and many others. We have taken their thoughts and
23 views into consideration, as we noted in the papers, after
24 Mr. Dunne and his colleagues reached out to the Debtors to
25 make their views known on the claims issue.

1 The special committee and the Debtors' attorneys
2 met with Mr. Dunne and his colleagues for an hour. That
3 level of engagement is unprecedented, and it shows serious
4 engagement with the equity holders in this case. The fact
5 that the special committee did not wholesale adopt Mr.
6 Dunne's views is not any evidence that they did not take his
7 views into account. It just means that, you know, the
8 special committee did not happen to agree with the views
9 that Mr. Dunne was espousing, but it does not mean that Mr.
10 Dunne is not adequately represented or that he cannot
11 adequately represent the views of his clients.

12 So just really briefly and then I can turn it over
13 to Mr. Pesce. I just want to address a few things that Mr.
14 Dunne said. He focuses on the fact there's no bond or bank
15 debt here. But what is also unusual about this case is that
16 there are billions of dollars of customer debt here and
17 those are significant claims and significant stakeholders in
18 this case.

19 You know, Mr. Dunne appears to take issue with the
20 fact that at hearings, the Debtors focused on their
21 customers. Of course, Your Honor, the Debtors' customers
22 are necessary to the go forward business. Mr. Dunne's
23 clients are sophisticated hedge funds. They do not require
24 the same sort of public commentary. You know, we engaged
25 with them, as I mentioned before, you know, behind closed

1 doors and we have taken their views into account, and we
2 will continue to do so, and I think the record reflects
3 that.

4 THE COURT: All right, thank you.

5 MR. KOENIG: Your Honor, that's all I have.

6 THE COURT: Let me hear from Mr. Pesce.

7 MR. KOENIG: Thank you.

8 THE COURT: You're muted, Mr. Pesce. You're still
9 muted.

10 MR. PESCE: Apologies for that. We, likewise,
11 oppose the appointment of an official committee here.

12 I want to really focus, like Mr. Koenig, on
13 whether the preferred equity is adequately represented. The
14 statement that preferred equity is not adequately
15 represented here is really, frankly, egregious and
16 unprecedented.

17 The special committee is running the
18 restructuring. One of the two members of the special
19 committee, Mr. Alan Carr, who is a well-established, well-
20 known fiduciary and restructuring cases, was designated by
21 WESCAP, the large, preferred equity holder. So one of the
22 two members of the special committee was literally appointed
23 by the preferred equity.

24 Second, just in terms of who else can represent
25 the interests of preferred equity, as you said, Mr. Dunne

1 and Jones Day are able to do that very well themselves.
2 Just to put a few numbers in perspective here: CDBQ, Jones
3 Day's client, represents it has nearly \$400 billion of
4 capital under management; WESCAP represents that it has
5 nearly \$9 billion of capital under management. They've very
6 able to pay professional fees; they do not need to pass
7 those on to the estate.

8 And to the point of whether an official committee
9 is necessary here. This case in recent weeks has really
10 been dominated by the question of the custody issue. There
11 is no official custody. There is no official withhold
12 committee. Those constituents are acting through ad hoc
13 groups that forced the issue and those ad hoc groups are now
14 engaged with us. We welcome dialogue with Mr. Dunne, as I'm
15 sure the Debtors do, if Mr. Dunne and Jones Day retained
16 their unofficial status.

17 And finally, to the extent there is any question
18 regarding any kind of secret pact or allegiance between the
19 Debtor and the committee, that's obviously incorrect. The
20 Debtor and the committee, it's not always open and public,
21 but we have lots of disagreements; we talk a lot. They
22 don't agree with everything we say; we don't agree with
23 nearly everything they say.

24 And then finally, just quickly on the solvency
25 points. This is really not an issue for today. We only saw

1 some of these documents yesterday. I'm going to avoid
2 sharing the demonstrative that we filed but suffice to say
3 the Debtor has scheduled claims for the customers and the
4 intercompany claims. They're allowed under Section 502
5 until a party objects. Mr. Dunne or Jones Day is free, or
6 any other party for that matter, is free to object. But
7 unless and until that happens, they are allowed claims.

8 And then finally just to highlight one issue in
9 particular on the intercompany claim. During the 341
10 meeting this week -- I'm not sure if Your Honor had the
11 opportunity to listen in -- it was revealed --

12 THE COURT: I'm not allowed to.

13 MR. PESCE: Oh, okay, there we go. Well, I'll put
14 it on the record then. During the 341 meeting, the CFO, now
15 acting CEO, Mr. Ferraro, put on the record that Celsius
16 Network, Ltd. -- that's the entity where the preferred
17 equity hold their instruments -- is holding several billion
18 dollars -- that's billion with a B dollars -- of
19 cryptocurrency.

20 It's inexplicable that Celsius Network, Ltd. would
21 be holding billions of dollars of cryptocurrency if the
22 customers do not have claims there or, at a minimum, that
23 the entity where the customers -- an entity where the
24 customers have claims have claims against Celsius Network,
25 Ltd. that would be senior to the preferred equity.

1 THE COURT: Let me stop you on there, Mr. Pesce.
2 I don't have a transcript from that. I don't -- I'm not
3 sure that that really, at this point, is something I need to
4 know about for purposes of resolving this motion.

5 MR. PESCE: Got it.

6 THE COURT: Any last points you want to make, Mr.
7 Pesce?

8 MR. PESCE: And finally, that's it. We oppose the
9 committee.

10 THE COURT: All right. Mr. Dunne, you filed a
11 motion for leave to file under seal unredacted documents I
12 guess you got from the Debtors. I wanted to ask Mr. Koenig
13 some questions about it, and I'll give you a chance to very
14 briefly address it.

15 Mr. Koenig, among the documents that Mr. Dunne has
16 asked to be able to file under seal is an SEC filing that
17 was never public and also two presentations, a January 22
18 presentation and a Fall '21 presentation. Mr. Koenig, are
19 you familiar with what those documents are, the two -- these
20 are Celsius mining presentations from, as I said, Fall '21
21 and January '22.

22 MR. KOENIG: Your Honor, again for the record,
23 Chris Koenig for the Debtors.

24 Yes, Your Honor, we're familiar with those
25 documents. Mr. Dunne's colleagues reached out to us

1 regarding those documents prior to filing their motion.

2 THE COURT: And let me ask you this question: To
3 whom were those documents provided?

4 MR. KOENIG: I believe that they were provided to
5 certain investors or potential investors in the company.
6 They were provided on a conf- --

7 THE COURT: Well, did each of those parties who
8 received a copy of those documents sign confidentiality
9 agreements?

10 MR. KOENIG: Your Honor, I'm not certain standing
11 here today whether they did or they didn't. But I'm happy
12 to --

13 THE COURT: By tomorrow at noon, please file a
14 declaration specifically addressing -- I'm not focused on
15 the S-1. I'm really focused on these two presentations that
16 were made to investors or potential investors; the one being
17 from -- the cover page is executive summary Fall 2021, and
18 the second one, cover page is January 2022 transaction and
19 business update.

20 I would like specifically addressed two whom -- to
21 each party to whom a copy was provided, whether each party
22 who received a copy signed a confidentiality agreement. And
23 after seeing that, I will -- and also, let me ask, Miss
24 Cornell, did you receive unredacted copies?

25 MS. CORNELL: Good morning, Your Honor. Shara

1 Cornell on behalf of the Office of the United States
2 Trustee. I didn't receive unredacted copies of the
3 documents and, like Your Honor, I had some reservations
4 about whether or not they should, in fact, be under seal.

5 THE COURT: Yeah. So, first off, I'm not sure
6 that I need to even consider those documents in connection
7 with the motion. But I would like by Mr. Koenig by
8 tomorrow, as I say, by noon, identification of each party to
9 whom it was provided and whether each party signed a
10 confidentiality agreement with respect to the information
11 that they were given.

12 MR. KOENIG: Understood. We'll be sure to do so.

13 THE COURT: And, Miss Cornell, after you see that,
14 if you want to file a short position with respect to
15 sealing, I would appreciate receiving it. I would direct
16 you to do that. I'd like to know what the U.S. Trustee's
17 position is.

18 Again, it may be that I decide this is not
19 something that I need to consider one way or the other with
20 respect to the pending motion.

21 I'm going to take the motion for appointment of an
22 official preferred equity committee under submission and I
23 expect to resolve it fairly promptly, but I do want to wait
24 and see this issue about whether these documents should be
25 sealed or not sealed. Okay? All right. Thank you very

1 much.

2 So let's move on in the agenda; just bear with me
3 a second. All right, we're going to move on to the issue of
4 the bidding procedures motion. Let me get -- I need to get
5 my papers in front of me with respect to that specific
6 motion.

7 MR. KOENIG: Thank you, Your Honor, and I'm going
8 to cede the lectern to my partner, Dan Latona for that
9 matter.

10 THE COURT: All right, just bear with me.

11 MR. PESCE: Likewise, Your Honor, the committee
12 will be represented by Mr. Colodny, who will speak to that
13 issue.

14 THE COURT: All right. Okay, just give me a
15 second. I got a lot of paper in front of me here.

16 All right. So with respect to the bidding
17 procedures motion, I'm allocating a maximum of 40 minutes:
18 15 minutes in support divided between the Debtor and the
19 committee and reserving 5 minutes by those parties for any
20 reply, 10 minutes by the U.S. Trustee in connection with its
21 objection, 5 minutes to the State of Texas Securities Board
22 for its limited objection.

23 And then there are other -- you know, there are a
24 series of other objections, some by pro se parties, and
25 we'll see where we get to. Again, I don't want anybody

1 repeating arguments made by others, but let's start with the
2 arguments in support. Again, 15 minutes in support divided
3 between the Debtor and the committee. And I know, as I
4 understand it, the Debtor and the committee came to an
5 agreement on the terms of the proposed bidding procedures.

6 All right. Who's going to begin for the Debtor?

7 MR. LATONA: Good morning, Your Honor. For the
8 record, Dan Latona of Kirkland & Ellis on behalf of the
9 Debtors.

10 Before I begin, I've been made aware that somebody
11 is livestreaming this hearing on Twitter Spaces. The
12 username is a Donnainclusive.

13 THE COURT: Deanna, are you able to cut them off
14 from the hearing?

15 CLERK: I don't see that name.

16 THE COURT: All right. You can be held in
17 contempt for doing what you're doing. If I get the identity
18 of the party that's livestreaming this hearing, you will be
19 subject to a contempt proceeding in this Court with very
20 serious sanctions. You either stop streaming now. If we
21 learn who you are, you will be held to account for it.

22 Go ahead, Mr. Latona.

23 MR. LATONA: Thank you, Your Honor.

24 THE COURT: Mr. Latona, let me just say if you get
25 any more information that they're continuing the livestream,

1 please advise and our IT people will begin their
2 investigation, and as I say, the most serious consequences
3 from violating the Court restriction. Go ahead.

4 MR. LATONA: Thank you, Your Honor. I have been
5 made aware that it's been discontinued or disconnected.

6 THE COURT: All right, go ahead.

7 MR. LATONA: Again, for the record, Dan Latona of
8 Kirkland & Ellis on behalf of the Debtors.

9 The next item on the agenda is the Debtors'
10 bidding procedures motion filed at Docket No. 929. The
11 Debtors did file a reply to the various objections that were
12 filed at Docket No. 1109, and the Debtors did upload a
13 revised proposed order at Docket 1148 that was uploaded this
14 morning.

15 And, Your Honor, I'll be brief and allow some time
16 for the committee to argue.

17 Since the first day hearing, the Debtors have made
18 clear that the goal of these Chapter 11 cases is to maximize
19 the value of the Debtors' estates. And very early on in the
20 cases, the Debtors took the step of beginning to market
21 certain of their assets, most notably the GK8 business.
22 That bidding process and sale process has been ongoing and
23 the Debtors have extended the dates at various times to
24 allow that process to continue. The final bid deadline
25 there is expected to be November 2nd with a sale hearing

1 November 15th.

2 This case, as Your Honor and everyone else is
3 aware, presents many issues of first impression and that
4 requires a unique approach to any transaction structure that
5 will allow the Debtors to continue either on a standalone
6 basis or as part of another structure.

7 Since the beginning of the Chapter 11 cases, the
8 Debtors' focus has been on stabilizing operations, but now
9 is the time to move these cases forward and that begins
10 today with the bidding procedures.

11 The Debtors are working on a business plan. But
12 after the formation of the creditors' committee, the
13 Debtors, in consultation with that committee, decided to
14 conduct a market check on their business on a parallel track
15 to the business plan. This will ensure that whatever
16 transaction structure these Chapter 11 cases ultimately take
17 will be a value maximizing transaction for the benefit of
18 all stakeholders.

19 The bidding procedures that the Debtors filed are
20 substantially similar to the bidding procedures approved in
21 similarly sized Chapter 11 cases. They provide flexibility
22 with respect to transaction structure, including the ability
23 of a party to invest in equity in a reorganized debtor or
24 other entity, or the ability to select a stalking horse
25 bidder if doing so would maximize the value of the debtors'

1 estates.

2 These bidding procedures were extensively
3 discussed with the creditors' committee. And given the
4 unique complexities and concerns in these cases, the Debtors
5 provided various consent and consult rights to the
6 creditors' committee, including the ability to review
7 qualified bids, review stalking horse bids in the
8 participation in diligence.

9 The Debtors are conducting a parallel process for
10 their retail platform assets in any remaining assets and
11 that's broken down into these categories: the retail
12 platform is the earned accounts and coin balances, retail
13 and institutional lending portfolios, swap and staking
14 services in self-page in Celsius X. The remaining assets
15 consist of the Debtors' mining operations and any assets
16 that are not sold pursuant to the retail platform.

17 Now since the Debtors filed the bidding
18 procedures, we have received various objections and have
19 worked with the committee and certain of these parties to
20 resolve those objections. Importantly, the revised proposed
21 order extends the timeline --

22 THE COURT: You've moved it out until after we get
23 the examiner's at least preliminary report.

24 MR. LATONA: That's correct, Your Honor. Among
25 other things, the stable coin motion is set to be heard on

1 November 1st, the custody and withhold issues are set to be
2 heard on December 7th and 8th, and the examiner's report is
3 due December 10th. The Debtors moved the final bid deadline
4 back to December 12th, so all bidders will have clarity and
5 certainty on those key legal issues before submitting their
6 bids.

7 THE COURT: Well, you assume that I will be able
8 to resolve the custody and withhold account holders, those
9 important issues by that date. I've set the hearing date,
10 but it doesn't assure that you're going to get -- I doubt
11 whether you'll get a ruling from the bench on that.

12 MR. LATONA: Understood, Your Honor. And these
13 bidding procedures do provide flexibility for the Debtors
14 and the committee to move those dates to the extent that
15 parties in interest are still lacking transparency or
16 certainty on those dates.

17 The revised proposed order also provides for
18 different structures of bids, including equity to be issued
19 in either a Reorganized Debtor or other entity, which allows
20 for a more creative transaction structure in these unique
21 cases.

22 And finally, Your Honor, the revised proposed
23 order provides more transparency for regulatory agencies.
24 We've committed to providing them with the identities of the
25 qualified bidders and allowing them to listen into the

1 auction on a listen-only basis so that they're aware of the
2 entities that are bidding and their ability to either
3 satisfy or have satisfied certain regulatory requirements.

4 THE COURT: Could you just briefly address the
5 criteria for eligibility of bidders?

6 MR. LATONA: Yes, Your Honor. It's set forth in
7 Section 7, the bid requirements. Each bid must identify and
8 fully disclose each entity and their shareholders, partners,
9 investors, or ultimate controlling entities. So as part of
10 that bid, they'll have to identify who they are and, as part
11 of that process will be providing that information over to
12 the state regulators so that they're aware of the entity
13 that's bidding on the assets and their ability to satisfy
14 regulatory requirements.

15 THE COURT: Okay, thank you.

16 MR. LATONA: Your Honor, the Debtors believe that
17 those revisions to the proposed order resolves many of the
18 issues that the objecting parties have raised, and to the
19 extent they don't, the remaining objections should be
20 overruled.

21 First, with respect to the U.S. Trustee, the U.S.
22 Trustee cites certain privacy policy concerns. The U.S.
23 Trustee correctly points to the Debtors' privacy policy that
24 allows the Debtors to sell their information pursuant to a
25 business transaction or a sale and, pursuant to Section

1 363(b)(1), a consumer privacy ombudsman is not required.
2 However, to the extent that a purchaser does not abide or
3 adopt the Debtors' consumer privacy policy, the Debtors
4 reserve the right to seek appointment of a consumer privacy
5 ombudsman.

6 THE COURT: I do want to address that right now.
7 I'm not ruling. I'm probably going to take this issue, the
8 motion under submission, but I have to tell you that my very
9 strong inclination is to require the appointment of a
10 consumer privacy ombudsman.

11 From the start of this case, the issues concerning
12 particularly the individual account holders, it was
13 certainly important with respect to the sealing motion that
14 led to a lengthy opinion on my part, and I understand the
15 Debtors' position that its privacy policies are such that it
16 would not require a consumer privacy ombudsman in this case.

17 Would you agree that I have the discretion to
18 require the appointment of a consumer privacy ombudsman?

19 MR. LATONA: Your Honor, the Debtors will abide by
20 whichever decision Your Honor submits.

21 THE COURT: Okay. Go ahead with your argument
22 then.

23 MR. LATONA: Thank you, Your Honor. With respect
24 to Section 363(o), Section 363(o) applies notwithstanding
25 Section 363(f). So to the extent that any of the Debtors'

1 consumer credit contracts are subject to the Truth in
2 Lending Act, Section 363(o) will preserve certain defenses.
3 To the extent that any of the contracts are amended, the
4 Debtors will notify the committee, the U.S. Trustee, and the
5 Court.

6 Your Honor, I believe certain of the states'
7 objections are resolved. I'll, you know, certainly allow
8 them to speak for themselves.

9 With respect to the various pro se objections, to
10 the extent they were not resolved by the Debtors' revised
11 proposed order, the Debtors submit that they are entirely
12 without merit and should be overruled.

13 THE COURT: All right.

14 MR. LATONA: In sum, Your Honor --

15 THE COURT: I have your arguments. Let me hear
16 from committee counsel.

17 MR. COLODNY: Aaron Colodny from White & Case on
18 behalf of the committee. Can you hear me?

19 THE COURT: Yes, I can, Mr. Colodny. Go ahead.

20 MR. COLODNY: Thank you. I'm going to avoid
21 trying to duplicate what Mr. Latona said, but I want to
22 touch on three things that have changed with respect to the
23 bid procedures from how they were initially filed. The
24 first is the timeline, which I think is where most of the
25 objections were focused.

1 As Your Honor knows, there's a delicate balance
2 between providing enough time for people to do the work, to
3 do a value maximizing transaction, for the examiner to
4 submit her report, and for the Court to make its decision,
5 and the need to get out of Chapter 11 quick. I think that
6 everybody here understands that getting recoveries to
7 account holders as fast as possible is key and the bid
8 procedures and the conclusion of an auction is not
9 necessarily the final step. And when we looked at this, we
10 also ran up against the holiday, which come and would incur
11 an additional month of delay, and we think that this
12 schedule strikes the right balance.

13 We understand that the Court may not be able to
14 issue its ruling on the custody dispute, but a hearing will
15 be heard. And to the extent bidders have hesitation about
16 submitting bids, it provides the Debtors and the committee
17 with the ability to extend those deadlines if there are
18 serious concerns.

19 It provides nearly two months until bids are due,
20 which we think gives enough time for people to do the work,
21 for the Debtors to get them the required information to move
22 forward. And it also allows for both the examiner's interim
23 report which is due on or about November 18th, and the final
24 report which is due December 10th to be issued before that
25 final bid deadline.

1 So I know that this is a delicate balance, but we
2 think this strikes the right balance of speed and value
3 maximization.

4 The second one is the consideration that may be
5 returned or may be offered. Working with the Debtors, we've
6 broadened the consideration from just cash to cash and
7 equity, which will provide for flexibility for people to
8 come forward with the best proposal. We think that's
9 essential to maximizing values here.

10 And then the third point is what Your Honor
11 mentioned, the requirements for a bid. And I want to point
12 out the unique requirement that a bidder must come forward
13 with its plan to meet regulatory requirements. I remember
14 at the first hearing we were involved in this case, the
15 Court very plainly asked the Debtors how it was going to
16 emerge with the regulations. This requires a path to that
17 to have a successful bid that will be considered.

18 I don't want to repeat too much, Your Honor, and
19 want to be mindful of the time you set. And so, the
20 committee's position is that it will -- it does support
21 these procedures. It also understands the Debtors working
22 on a standalone plan and we have not seen that plan lately -
23 - or we have not seen that plan yet. We believe that it
24 will be provided to us shortly, and we anticipate it will
25 move along a similar schedule, and we reserve all rights

1 with respect to that.

2 THE COURT: And do you have a position on the
3 consumer privacy ombudsman?

4 MR. COLODNY: Your Honor, we are all in favor of
5 any measures to protect account holders' information, and to
6 the extent Your Honor believes that a consumer privacy
7 ombudsman is necessary here, we support its appointment.

8 THE COURT: All right. Thank you very much, Mr.
9 Colodny. Miss Cornell.

10 MS. CORNELL: Good morning again, Your Honor. For
11 the record, Shara Cornell on behalf of the United States
12 Trustee. I'll keep this short and sweet. I think our
13 papers say the majority of what we need to say.

14 But just to reiterate, you know, this is not a
15 traditional, you know, melting ice cube situation. There's
16 no stalking horse bidder, there's no designated breakup fee
17 yet, but they might be included later if one arises.

18 THE COURT: May I ask you this though, Miss
19 Cornell? Where is the cash going to come from to operate
20 the business when we get to January?

21 MS. CORNELL: You know, Your Honor, it's a really
22 good question, and I don't know because to this date --

23 THE COURT: I mean, because you start by saying
24 this is not the instance of a melting ice cube. But
25 potentially, it becomes a very serious issue for the Debtor

1 to continue to fund its operations when we get -- you know,
2 I won't put a specific date in mind, but certainly when we
3 get to 2023, it becomes important. And that's why -- so I
4 certainly understood the portion of your objection regarding
5 examiner, the examiner is working hard, has indicated, you
6 know, her intention to have an interim report; that's very
7 important. I think it'll be very important to the potential
8 bidders, as well as to the state regulators and others and
9 your office.

10 But I am very concerned. I think this case needs
11 to move forward as quickly as possible. You know, we'll get
12 to the issues and discussion about the fee examiner. There
13 are lots of professionals who are working on this whose
14 meters are running. This is clearly an expensive case, and
15 I think -- I am concerned by your position about -- how long
16 do you want to put this off?

17 MS. CORNELL: I understand that, Your Honor, and I
18 understand your concern about funding the case. But to
19 date, there's been a lot of changes in the Debtors' position
20 in how they're going to fund this case. Right now, they're
21 saying that they need to sell these assets to fund the case.
22 Previously, it was that the mining business was going to
23 support this case.

24 THE COURT: They haven't exactly said they have to
25 sell the business. The committee has pushed the Debtor to

1 follow a two-track approach. As I understand it, the
2 Debtors are still pursuing a standalone plan, but have also
3 agreed with the committee to pursue the alternate route of a
4 sale, multiple sales.

5 So I'm not sure if I'm not feeling a greater sense
6 of urgency than some of the other parties are, but I am
7 feeling a sense of urgency to move this forward. It doesn't
8 assure that there will be a sale, but it sets in motion a
9 set of procedures, which seem to me to be fairly balanced.

10 It, frankly, looks to me that the committee of
11 unsecured creditors has had substantial input with the
12 Debtor in charting a path forward to bidding procedures that
13 would, if that's what's followed, maximize value. I mean, I
14 think we're all in agreement that the goal is to satisfy
15 creditor claims to the fullest extent possible.

16 MS. CORNELL: Absolutely, Your Honor.

17 THE COURT: I think time works against that is my
18 concern, Ms. Cornell.

19 MS. CORNELL: Your concerns are understandable,
20 Your Honor, and I understand that, but I don't want to -- we
21 can put that to the side for now.

22 But I also just want to, with respect to the
23 privacy ombudsman, I just want to reiterate that we agree
24 with Your Honor with respect to that issue.

25 And then with respect to 363(o), I understand that

1 in the Debtors' reply, they suggest that if the TLA applies,
2 you know, they will work accordingly. I think that any
3 order needs to be much more specific as to whether or not
4 that, you know, the Truth in Lending Act applies and what
5 that means for this case. The motion was silent as to that.
6 And it sounds to me that the retail platform sale is
7 necessarily going to include the lending portfolio.

8 THE COURT: All right. I would hope, Miss
9 Cornell, that if an order that gets entered includes a
10 requirement for a consumer privacy ombudsman that your
11 office proceeds very expeditiously to appoint somebody.

12 MS. CORNELL: Absolutely.

13 THE COURT: Okay. Because I do think -- look,
14 it's no secret it's something I feel pretty strongly about
15 in the context of this case and other cases, but in this
16 case in particular. And I think getting a good consumer
17 privacy ombudsman in place quickly could help the process of
18 drafting any APA or whatever the form the agreement takes,
19 okay?

20 MS. CORNELL: Understood, Your Honor.

21 THE COURT: All right. Anything else you want to
22 add?

23 MS. CORNELL: No, thank you, Your Honor.

24 THE COURT: All right. Let me hear from -- Miss
25 Milligan, you're going to argue on behalf of the Texas

1 Securities regulator?

2 MS. MILLIGAN: Yes, Your Honor. Can you hear me?

3 THE COURT: Yes, I can. Please go ahead.

4 MS. MILLIGAN: Thank you, Your Honor. Layla
5 Milligan with the Texas Attorney General's Office appearing
6 on behalf of the Texas State Securities Board and the
7 Department of Banking. I'll keep my comments very brief.

8 Our primary concern in the limited objection that
9 was filed was the timing. Our concern was the attempt to
10 market and sell property that has not yet been defined by
11 this Court as actually property of the estate, owned by the
12 Debtor, and would attempt to sell that and how that would be
13 successful with all of the pending open issues involving the
14 investigation by the committee and the examiner.

15 We believe that those issues are resolved with the
16 extension of the deadlines passed by this Court's --

17 THE COURT: So you're satisfied with that
18 extension.

19 MS. MILLIGAN: We are and we're appreciative of
20 that extension.

21 THE COURT: Okay.

22 MS. MILLIGAN: Comments will be brief, and I
23 appreciate this Court's time.

24 THE COURT: All right. Thank you very much, Miss
25 Milligan. May I ask you this, Miss Milligan? I think, and

1 I think really Debtors' counsel addressed this, you're going
2 to get the information on who the prospective bidders are,
3 and you'll have an -- it's obviously on a confidential
4 basis, but your office would have an opportunity to begin to
5 weigh in with the Debtors and the committee about any
6 concerns you have about particular bidders.

7 I just would urge, if this motion is approved,
8 that you and I know other states and we'll also hear from --
9 there's a limited objection from the coordinating states as
10 well -- I'm not sure whether they have anything beyond what
11 your position has been -- but that you try to confer with
12 them and to the extent that you're able to, speak with a
13 unified voice in terms of the process of any concerns that
14 the state regulators have with respect to prospective
15 bidders.

16 MS. MILLIGAN: Absolutely, Your Honor. I'm happy
17 to coordinate with the other state regulators, regulatory
18 bodies, and we've been in communications with the committee
19 and Debtors' counsel, and we'll continue to do that. Our
20 goal is to make sure that whoever the potential purchaser is
21 meets all the regulatory requirements or can meet them and
22 we want to keep those lines of communications open to have
23 this be a successful transaction.

24 THE COURT: Thank you very much, Miss Milligan.

25 MS. MILLIGAN: Thank you, Your Honor.

1 THE COURT: All right. What I'd ask now if anyone
2 else wants to be heard that they use the raise hand function
3 on the bottom of your screen, and I'll try and call on your
4 in the order in which hands go up.

5 Mr. Frishberg.

6 MR. FRISHBERG: Thank you, Your Honor. This is
7 Daniel Frishberg, pro se. I'll be pretty brief today,
8 basically to respond to the Debtors' response to my
9 objection.

10 One of the reasons I did not object to the bidding
11 procedures was because the U.S. Trustee and other parties
12 already did. I noticed that the Debtors responded partially
13 to each pro se objection to say that they are without merit.
14 I disagree. I believe that the actions they said part --
15 alleging breach of fiduciary duty met the standards of that
16 in Boone because the Debtors and the Debtors' counsel did
17 not move up the sale but for.

18 The estate would not be billed for the associated
19 costs moving it up to a rear date and then moving it back to
20 the original deadline. They knew the full litigation
21 schedule pretty well with custody and withhold, that it
22 would not have been resolved by that point, and they knew
23 there were other claims under 541 that had yet to be filed,
24 let alone resolved in this Court, and they are asking
25 bidders to bid without knowing what is property of the

1 estate which would reduce the value of the final bids, as
2 well as the intensity and veracity of the bidding.

3 The Debtors' counsel is among some of the best in
4 the world, so they should have been able to predict that
5 there would have been objections and the issues had been
6 unresolved, which would have caused the sale to be delayed.
7 And for that reason and the additional costs, including
8 legal fees that were incurred by moving the sale, should be
9 denied.

10 Thank you, Your Honor, and that is all for now.

11 THE COURT: Thank you, Mr. Frishberg. Mr.
12 Herrmann.

13 MR. HERRMAN: Thank you, Your Honor. I'll try to
14 be brief as well.

15 While I submitted two filings and they contain
16 what you need to know on my position on bidding procedures
17 and a lot of my positions, and they also contain how a lot
18 of creditors who have been very involved in this process and
19 are either leading ad hocs or just incredibly active and
20 spending a lot of time on this case feel about the bidding
21 procedures as well.

22 First, I am relieved that these changes were made
23 to the bidding procedures, which were completely untenable
24 before and weren't going to work. I'm glad --

25 THE COURT: Let's deal with what's before me now

1 and not was before, okay?

2 MR. HERRMAN: Yeah, of course. Yeah, I'm glad
3 that the UCC can talk with bidders. I would say we want a
4 community-centered plan with creditor groups and potentially
5 ad hocs involved. We want creditors involved in formulating
6 the plan and talking with bidders, whether it is a bid or
7 whether it's a --

8 THE COURT: Well, you're not going to get to talk
9 to the bidders, Mr. Herrmann.

10 MR. HERRMAN: All right. All right.

11 THE COURT: That isn't going to happen. I mean,
12 let me, in saying that, I value your input and I value the
13 input of the other pro ses who have been appearing regularly
14 at hearings and I always try to call on you and others to
15 give an opportunity to speak.

16 But in terms of the sale process, I mean, I'm not
17 -- you know, we'll see where the sale process comes out,
18 with how many bidders, et cetera. You'd certainly have an
19 opportunity to -- if they're a stalking horse or proposed
20 parties to a transaction, you'll certainly have an
21 opportunity to object then, but not to participate in any
22 negotiation with them.

23 MR. HERRMAN: All right. Well, fair enough.

24 Thank you for letting me know that, Your Honor.

25 So, yeah, I guess I would say also I did file a

1 supplemental limited objection.

2 THE COURT: You did and it's ECF Docket No. 1080.

3 MR. HERRMAN: Correct, yes. And I think, you
4 know, deciding this before property of the estate issues are
5 decided, I think is a little bit premature. I mean, we'll
6 see. I'm reserving judgment.

7 We haven't had litigation on loan collateral or
8 returned loan collateral, return of collateral in clear
9 breach of the contract terms, including around settlements
10 with regulators that said that they would not put, you know,
11 coins into -- that they would not put them into earn after a
12 certain date. I signed a contract stating explicitly that
13 it was my property when I signed the loan agreement. And
14 so, then they return points --

15 THE COURT: Let me just say, those issues are
16 clearly coming before me and they clearly have to get
17 resolved, but let's deal specifically with the bidding
18 procedures motion, okay.

19 MR. HERRMAN: Okay. I mean, in terms of the
20 bidding procedures, I would say I want to preview that, you
21 know, around when exclusivity ends. I will be making some
22 requests about how we might further improve the process to
23 resolve these issues in a collaborative way. I haven't
24 figured it out. I think that there -- I don't think this
25 can all be resolved through litigation, Your Honor. Like, I

1 think I've listed those issues. I think it is material --

2 THE COURT: Mr. Herrmann, litigation in a
3 bankruptcy case is the last resort, not the first.

4 MR. HERRMAN: Good. I'm glad to hear that,
5 because I think that, like, a lot -- I think that we can
6 hopefully find a way to not have this drag on forever.

7 THE COURT: Okay. All right, let me call on Miss
8 Cohen next.

9 MS. COHEN: Yes, Your Honor. This is Hollace
10 Cohen. The first thing I'd like to note is that the Debtor
11 has mistakenly listed my client as pro se, whereas I and my
12 firm, Fisher Broyles, are representing him, so I wanted to
13 clarify that.

14 The other item that I wanted to address very
15 briefly is the fact that our client has been very concerned
16 about assets that are not property of the estate, of the
17 Debtors' estate, end up in a sale.

18 I don't think that the dates alone are what gives
19 me some comfort because that is kind of slight. But I did
20 appreciate where they're talking about the fact that they
21 can't sell assets that are not yet determined to be property
22 of the estate if there's any kind of dispute. They say for
23 the avoidance of doubt -- this is their reply to our
24 objection -- they say for the avoidance of doubt, the
25 Debtors will not sell or purport to sell any assets absent a

1 finding by the Court that they have title and it's all ready
2 to sell the assets.

3 Now, we would have looked for some language in the
4 order itself that recognized that and that would be our
5 preference, but I do understand that they have at least so
6 stated.

7 THE COURT: All right. Thank you very much, Miss
8 Cohen. Mr. Kotliar.

9 MR. KOTLIAR: Hi, good morning, Your Honor. Brian
10 Kotliar of Togut, Segal & Segal, counsel for the ad hoc
11 group of custodial account holders.

12 Your Honor, we've obviously made our position
13 clear that custody assets are not property of the estate.
14 We don't have consultation rights under the bidding
15 procedures and we're not seeking any consultation rights.

16 I'd just like to address one thing that Mr.
17 Herrmann said, which is to the extent that any bidders would
18 like to speak with us regarding the custody assets or the
19 custody business, we're more than happy to speak with them
20 and we welcome those conversations.

21 THE COURT: All right. Thank you very much. All
22 right, Miss Cohen, if you could put your hand -- you got to
23 lower the hand function. I've given you an opportunity.
24 And, Mr. Kotliar, the same for you; please lower your hand
25 so I don't see them on the screen, okay?

1 Is there anybody else who wishes to be heard
2 before I give the brief time for reply? Mr. Herrmann,
3 you've already been heard. Your hand is still up, but I'll
4 only listen to you once with respect to this motion, okay.

5 All right, for the moving parties.

6 MR. LATONA: Again, for the record, Dan Latona of
7 Kirkland & Ellis on behalf of Debtors. I'll be brief, Your
8 Honor.

9 The bidding procedures are proceeding on a dual
10 track, along with a standalone reorganization. The Debtors
11 are open to pursuing any transaction that maximizes the
12 value of the estates. The bidding procedures do allow the
13 Debtors to select a stalking horse bid and offer bid
14 protections. Those would be put before Your Honor, so any
15 party in interest would be able to object.

16 Responding briefly to a few of the other
17 objections. The Debtors have their fiduciary duties
18 directly to the Debtors and the Debtors' counsel will take
19 actions that maximize the value of the estates. The
20 decision with respect to fees of any professionals is not
21 before Your Honor today and this is not the proper forum.
22 And certain issues with respect to property of the estate
23 are yet to be decided, but they are in front of Your Honor
24 but not today.

25 So, in short, the Debtors say that the bidding

1 procedures are a sound exercise of the business judgment and
2 should be approved.

3 THE COURT: Let me ask a couple of questions.
4 Have prospective bidders come forward? Do you have any NDAs
5 yet or is there a form of NDA that's being used?

6 MR. LATONA: Centerview, the Debtors' investment
7 banker, is actively talking to bidders. They are doing the
8 work.

9 THE COURT: Okay. All right. Is there anybody
10 else who wishes to be heard with respect to the bidding
11 procedures motion? I plan to take it under submission and
12 not rule today. But again, I'm going to try very hard to
13 get decisions out from all of the matters that are before me
14 today pretty promptly. Any last change? Okay.

15 Let's go on to the cash management motion.

16 MR. LATONA: Thank you, Your Honor. At this time,
17 I'll turn the podium back over to my partner, Mr. Koenig.

18 THE COURT: Mr. Koenig.

19 MR. KOENIG: Good morning again, Your Honor. For
20 the record, Chris Koenig of Kirkland & Ellis for the
21 Debtors.

22 Next up is the final cash management order. We
23 filed a revised proposed order late last night at Docket No.
24 1145. I'm pleased to report that I believe the entry of the
25 final order is fully consensual. As explained in the reply

1 that we filed the other day at Docket No. 1108, there was
2 one limited objection to the entry of the final order by the
3 U.S. Trustee. We were able to resolve that objection
4 through, among other things, the stipulation on certain
5 security matters that the Debtors agreed to with the
6 committee, which is filed at Docket No. 813.

7 And just to provide a brief update on that
8 security stipulation, at the time of the filing of the
9 stipulation, there were still two items that needed to be
10 completed following the entry of the stipulation. First,
11 the Debtors were to find a custodian who'd be willing to
12 hold the backup of the Debtors' account keys. I'm pleased
13 to report we've reached an agreement with such a custodian
14 to handle the backup of the keys and the process is ongoing
15 to backup the keys with that custodian.

16 THE COURT: And who is the custodian?

17 MR. KOENIG: It's Coincover, Your Honor.

18 THE COURT: All right, go ahead.

19 MR. KOENIG: And additionally, the stipulation
20 provided that the Debtors and the committee would seek an
21 acceptable custodian as defined in the stipulation with
22 respect to implementing the transfers of cryptocurrency.
23 Those discussions remain ongoing between the Debtors and the
24 committee and potential acceptable custodians. But the
25 comprehensive security protocol set forth in the stipulation

1 reflects the agreement of the Debtors and the committee
2 regarding heightened protocols to ensure that the Debtors'
3 assets are properly protected during these Chapter 11 cases.

4 The only other item I wanted to address, Your
5 Honor, is that as we explain in our reply, there are two
6 brokerage accounts for which we believe a waiver of the
7 requirements of Section 345 of the Bankruptcy Code is
8 appropriate. We have two brokerage accounts: first, the
9 Oppenheimer account, which has a zero balance but will
10 remain open. The Debtors have agreed not to use it during
11 these Chapter 11 cases.

12 And then there's another account, the SSG account.
13 It's impractical to close that account at this time. The
14 units in that account are illiquid and, as we set forth in
15 our reply and in the attached declaration, it would be very
16 difficult to sell those illiquid units at this time. It
17 would be value destructive, Your Honor.

18 So for those reasons, we would respectfully
19 request that the Court enter the final order that we filed
20 last night.

21 THE COURT: All right. Miss Cornell.

22 MS. CORNELL: Thank you, Your Honor. Shara
23 Cornell again for the record with the Office of the United
24 States Trustee.

25 What the Debtors have said is accurate. The

1 Debtors have shown that the funds are secured, and we
2 understand that they're requesting a waiver from the Court.
3 At this time, we believe that they've satisfied our
4 requests.

5 THE COURT: Yeah. The 345 does provide the Court
6 with the ability to waive the requirements of 345. The
7 Debtor has the burden to establish good cause for the waiver
8 of the requirements of 345. Cases such as Celsius involving
9 crypto assets raises some very challenging issues.

10 In the very first objection that the U.S. Trustee
11 filed, the issue of whether crypto assets are current for
12 purposes of 345 is an unsettled issue. I made clear at a
13 very early hearing that whether or not 345 specifically
14 applied. My major concerns rested on the issue of security
15 of the assets, and I'm certainly pleased that the U.S.
16 Trustee and the Debtors have been able to reach agreement.

17 Let me also hear from the committee on this issue.

18 MR. COLODNY: Your Honor, Aaron Colodny from White
19 & Case on behalf of the committee. I want to note that we
20 have reached agreement with the Debtor which is in the coin
21 stipulation. That stipulation has been presented to Your
22 Honor, but I don't believe it's been entered.

23 THE COURT: Right. I wanted to hear this whole
24 thing before...

25 MR. COLODNY: Okay. And so, what the coin

1 stipulation provides and the security that we think is
2 important is, first, the backup of the keys, which as Mr.
3 Koenig said, has been completed with Coincover. The second
4 is the acceptable custodian, which I can report Mr. Koenig's
5 comments are correct. We've been working constructively to
6 try to find somebody, and that process is ongoing.

7 One other thing I will highlight from the coin
8 stipulation is any transfer has to be done, first, pursuant
9 to a court order; second, authorized by four authorized
10 individuals, three of whom must be United States authorized
11 individuals; and, third, be approved by the special
12 committee. The committee also has to receive notice of
13 those transfers.

14 And so, we think that these, coupled with the
15 backup of the keys, provides adequate protection of the
16 crypto assets and notice if they ever get moved, and we ask
17 that the Court enter the presentment.

18 THE COURT: All right. Does anybody else wish to
19 be heard with respect to the cash management motion, also
20 with respect to the proposed stipulation that Mr. Colodny
21 referred to.

22 All right. I'm satisfied that the Debtor has
23 shown good cause to waive the requirements of Section 345
24 under the terms of the proposed order, which the Court has
25 reviewed, and also the proposed stipulation that Mr. Colodny

1 has referred to, so both will be entered. I want to be sure
2 -- I don't know whether we have the Word format of the order
3 that was sent to the Court last night and of the
4 stipulation, but they will both be approved. Okay?

5 MR. COLODNY: Thank you, Your Honor.

6 THE COURT: All right. Thank you very much. Next
7 on the agenda there is the removal extension motion, ECF No.
8 987. It's the Debtors' motion for entry of an order
9 extending the time to file notices of removal of civil
10 actions and granting related relief.

11 Let me just ask, can somebody on behalf of the
12 Debtor, tell me how many actions there are?

13 MR. COLODNY: Your Honor, Mr. Latona will handle
14 this matter.

15 THE COURT: Okay, Mr. Latona.

16 MR. LATONA: Good morning, Your Honor. Again for
17 the record, Dan Latona of Kirkland & Ellis on behalf of the
18 Debtors.

19 At this time, I can't say for certain how many
20 actions there are. We can certainly consult with the
21 company and report back.

22 THE COURT: All right. I'm going to grant the
23 application. It's pretty standard this early in the case
24 and I'm happy to do that. Just bear with me a second.

25 Let me just say if we get to the end of the

1 extension period and the Debtor wishes to seek a further
2 extension of it, they should file, include an exhibit to the
3 motion that lists each of the actions pending and in which
4 courts they're pending, okay.

5 MR. LATONA: Understood, Your Honor.

6 THE COURT: For present purposes, this first
7 extension I'm happy to grant it, so the removal extension
8 motion is granted.

9 MR. LATONA: Thank you, Your Honor.

10 THE COURT: Next is the examiner's motion for an
11 order authorizing the examiner to conduct 2004 examinations;
12 it's ECF No. 963. I don't need to hear anything about it.
13 That motion is granted. Just submit the order, and Mr.
14 Lazar and that will promptly be entered.

15 Mr. Lazar, at this stage, do you have an
16 indication of how many different parties you're going to
17 seek documents from or testimony from.

18 MR. LAZAR: Your Honor, we do not yet, and thank
19 you, Your Honor. We do not yet. Most of the information
20 we're seeking at this point is coming from the Debtor, so
21 we're hoping it's going to be a relatively limited number of
22 2004 requests. However, you know, we did want the order
23 entered given the expedited timing on an interim report.

24 And, Your Honor, just so you know, with respect to
25 the order, we did upload a revised order last night. We

1 didn't receive any objections, but we did receive some
2 comments from the committee, which we have incorporated into
3 that order; it's docketed at 1136.

4 THE COURT: Thank you very much. That will be
5 entered. Can you just give me a very brief update, Mr.
6 Lazar, on the status of the examiner's investigation?
7 Obviously, it's a very aggressive schedule for an interim
8 report. I'm sure you and your colleagues are quite busy on
9 that. But without going into the details, are you able to
10 live with that schedule? Let's put it that way.

11 MR. LAZAR: Yes, Your Honor. So far, we think
12 we're going to be able to live with the schedule. We're, of
13 course, heavily focused on the interim report and the
14 information needed for that part of the report, and we are
15 making progress.

16 THE COURT: All right, thank you. All right, the
17 next on the agenda, and I really already dealt with this, is
18 the equity committee sealing motion in connection with the
19 motion for appointment of an official committee of the
20 preferred equity holders.

21 I've already asked for an affidavit, a declaration
22 from the Debtor with respect to the distribution of two of
23 those documents. As to the S-1, which as I understand it,
24 was never publicly circulated, I don't have a problem about
25 that being -- I don't think I really need it for that

1 pending motion.

2 So I will take under submission without argument
3 the sealing motion and I'll wait to see the affidavit that
4 gets filed with respect to that.

5 All right, so now we get to the adversary
6 proceeding pretrial conferences. The first, it's on the
7 agenda on Page 9, it's Item 8; it's the Celsius Network v.
8 Stone. Who's appearing for the parties in that?

9 MR. HURLEY: Your Honor, Mitch Hurley with Akin
10 Gump Strauss Hauer & Feld, special litigation counsel for
11 the Debtors.

12 THE COURT: All right. And for the defendants in
13 that case?

14 MR. ROCHE: Kyle Roche on behalf of Jason Stone
15 and KeyFi.

16 MR. HURLEY: Your Honor, may I make a suggestion
17 before we proceed with the Stone pretrial conference?

18 THE COURT: Sure.

19 MR. HURLEY: So there are two pretrial conferences
20 on: one with respect to the Stone adversary and one with
21 respect to Prime Trust. The Prime Trust adversary pretrial
22 conference may be quite a bit shorter and simpler because we
23 have arrived at an agreement.

24 THE COURT: All right. Hang on and I'll call
25 that. We'll deal with that quickly. Just bear with me a

1 second.

2 All right, so Prime Trust is -- Celsius Network
3 Limited v. Prime Trust, LLC is Adversary Proceeding No. 22-
4 01140. And in connection with having reviewed the docket in
5 that this morning, I have in front of me both a copy of the
6 Complaint and also the joint Rule 26(f) report. That was
7 filed and attached to the report as Exhibit A is a proposed
8 case management and scheduling order.

9 So let me get the appearances. I assume, Mr.
10 Hurley, you're appearing in that adversary as well. Who's
11 appearing for the defendant.

12 MR. STEEL: Good morning, Your Honor. Howard
13 Steel of Goodwin & Procter on behalf of Prime Trust.

14 THE COURT: Good morning, Mr. Steel. All right,
15 Mr. Hurley, do you want to begin.

16 MR. HURLEY: Thank you, Your Honor. So we have
17 good news to report. Last night, Celsius and Prime Trust
18 were able to agree on the terms of the stipulation that
19 will, if approved by Your Honor, pursuant to Rule 9019,
20 settle the litigation that Celsius commenced against Prime
21 Trust on August 23, 2022. In Celsius's Complaint, we had
22 alleged claims for turnover and breach of contract with
23 respect to certain property that is currently in the
24 possession of Prime Trust.

25 Under the terms of the stipulation again, and

1 subject to Your Honor's approval, that property would be
2 returned to a Celsius designated wallet that is to be,
3 again, approved by Your Honor. And to the extent the
4 stipulation goes through and is blessed through the 9019
5 process, the assets are returned, that property would be
6 required to remain in that designated Celsius wallet until a
7 still further order from the Court addressing how it should
8 be distributed.

9 THE COURT: Can you give me an estimate of the
10 value of the property that will be returned?

11 MR. HURLEY: So prices are variable, of course, as
12 the Court is aware, but I would say it's been in the sort of
13 \$16-to-\$20 million range.

14 THE COURT: All right. Mr. Steel.

15 MR. STEEL: Your Honor, Howard Steel, Goodwin &
16 Procter, on behalf of Prime Trust.

17 Yeah, we're very pleased we reached an agreement
18 on the stipulation, agree with Mr. Hurley's recitation. It
19 was paramount that the procedures that we baked into this
20 stipulation provides adequate notice to each user of the
21 agreement. And, as Mr. Hurley said, that the transfer to
22 the designated Celsius wallet is without prejudice to any
23 party in interest to asserting any interest or claim with
24 respect to the property that's going to be transferred. L

25 So we're pleased with the result and the

1 infrastructure and look forward to moving the matter
2 forward. Thank you, Your Honor.

3 THE COURT: Thank you very much, Mr. Steel. Mr.
4 Hurley, have you conferred with the U.S. Trustee and with
5 committee's counsel with respect to this adversary and with
6 respect to the proposed settlement?

7 MR. HURLEY: We have not conferred with those
8 parties yet, Your Honor. There will be an opportunity
9 through the 9019 process if parties have an objection to the
10 way we're proposing handling the assets. And if those
11 objections are raised, of course, you know, we will listen
12 to people offline. Maybe we don't even have to litigate all
13 the way to the end of a 9019 if people have objections that
14 can be addressed would, of course, be open to doing that.

15 But we wanted to be -- our real priority was
16 trying to get these assets back into the estate as promptly
17 as we can.

18 THE COURT: I would urge you -- is the 9019
19 drafted yet?

20 MR. HURLEY: So the stipulation requires Celsius
21 to file the 9019 motion I think by November 2nd. And so,
22 it's not drafted yet, but it certainly can be ready to go
23 very soon, Your Honor. We won't wait until the 2nd.

24 THE COURT: All right. I would urge you in
25 advance of filing the 9019 -- I'm urging you but not

1 requiring you. I urge you to confer with the U.S. Trustee
2 and the committee's counsel. Yes, any party in interest
3 will have an opportunity to object to the 9019. My focus is
4 trying to avoid any objections, and I think it's not an
5 assurance, but a way that that may well avoid objections is
6 if you confer with the committee and with the U.S. Trustee.

7 I'm not foreclosing any other parties in interest
8 from raising objections, you know, once the 9019 is filed,
9 but I would like to see if we could, in the drafting
10 process, if you could avoid any issues. Okay?

11 MR. HURLEY: Your Honor, we will.

12 THE COURT: All right. Thank you very much. Mr.
13 Steel --

14 MR. HURLEY: Just for the record --

15 THE COURT: Go ahead.

16 MR. HURLEY: -- Your Honor, before we move on.
17 Just for purposes of this conference, one of the provisions
18 in the stipulation is that all the deadlines that otherwise
19 would go forward under the adversary proceeding are stayed.

20 THE COURT: Okay. Hang on just a second,
21 everyone. All right. I apologize for that interruption.

22 Anything else with respect to the Prime Trust
23 adversary, Mr. Hurley or Mr. Steel?

24 MR. HURLEY: Not from the Debtor, Your Honor.

25 THE COURT: All right, so now let's get to the

1 adversary, Celsius Network Limited v. Jason Stone and KeyFi,
2 Inc. It's Case No. 22-01139. I've reviewed the Complaint.
3 I also have in front of me the joint Rule 26(f) report, and
4 I have the proposed case management scheduling order that's
5 prepared, which essentially is in the format of the template
6 for case management orders.

7 Mr. Hurley. Well, first off, Mr. Roche, you're
8 appearing for the defendants in that?

9 MR. ROCHE: Yes, both KeyFi and Jason Stone.

10 THE COURT: Okay, all right. Mr. Hurley, go
11 ahead.

12 MR. HURLEY: Sure. Your Honor, it sounds like
13 you'd like to hear a brief overview of the case?

14 THE COURT: Yes, I would.

15 MR. HURLEY: Okay. So Celsius commenced this
16 action on August 23, 2022. As amended, the Complaint
17 alleges claims for turnover, conversion.

18 THE COURT: There was a motion to dismiss the
19 original Complaint and you filed an amended Complaint now.

20 MR. HURLEY: Correct.

21 THE COURT: Okay.

22 MR. HURLEY: Complaint as amended alleges
23 turnover, conversion, fraudulent misrepresentation, breach
24 of fiduciary duty, unjust enrichment, replevin, and
25 accounting.

1 So Celsius engaged the defendants to provide
2 staking and decentralized finance services beginning in
3 August of 2020. Celsius provided the defendants with coins
4 to deploy solely in those defined staking activities and
5 solely in approved activities. The coins were valuable at
6 the time that they were provided. But as a result of a very
7 sharp run up in market prices for coins, by early 2021, the
8 coins were immensely valuable, worth more than a billion
9 dollars.

10 By that time, Celsius had identified concerns
11 regarding the defendants, including related to their
12 reporting and other practices, and in early 2021, instructed
13 the defendants to return the coins. Now, at that time,
14 Celsius is really focused on ensuring they got the coins
15 back, to make sure a proper accounting was done, and to put
16 into place additional security protocols related to the
17 coins. And the response from the defendants was, yes, we
18 will do it, and they provided a plan to return the coins,
19 but the defendants didn't return the coins.

20 So on March 26, 2021, Celsius KeyFi, which is the
21 Celsius decentralized finance subsidiary, formally demanded
22 that Stone returned all of the coins. The defendant's
23 response again, orally and in writing, was that they would
24 return all of Celsius's coins, plus what they claim to have
25 generated in the form of profits. Again, this is in

1 writing. And over a period of weeks, many of the coins were
2 returned, but a substantial balance remained outstanding.

3 As Celsius would later discover, that balance
4 apparently had been either lost or stolen by the defendants,
5 despite the fact the defendants were telling Celsius that
6 the defendants could return the coins and would return the
7 coins and could do so in 48 hours, et cetera.

8 THE COURT: At current market prices, do you have
9 an estimate of the value of what was not returned?

10 MR. HURLEY: Well, at current market prices, it's
11 difficult to say. I would say it was probably, if we're
12 talking about dollar value, really rough numbers, it was,
13 you know, in the spring when the market was at its peak,
14 maybe it was \$300 million worth of coins that was part of
15 the balance that was outstanding. That number in terms of
16 U.S. dollars obviously is much smaller now because of the
17 decline in prices, but it was a substantial gap.

18 So we now know that without authorization during
19 this period of time when the defendants were representing
20 that they could and would return the coins, they actually
21 had engaged in a bunch of unauthorized activities with the
22 coins. Again, they were only authorized to engage in
23 staking and decentralized finance, but they had begun to do
24 things like buy NFTs, hundreds and hundreds of NFTs. They
25 acquired, it appears anyway, equity interests in certain

1 companies, and we believe on other unauthorized forms of
2 property. And critically, they then also stole that
3 property.

4 So you can see that they transferred, went into
5 Celsius's own wallets and transferred property in Celsius's
6 own wallets, including Celsius coins, but also including
7 things like the NFTs that the defendants purchased with
8 Celsius coins, and transferred them to wallets that on
9 information and belief are owned and controlled by the
10 defendants.

11 Now, it is true the defendants also appear to have
12 not been competent at defi, and it is possible they also
13 lost a substantial amount of Celsius coins as a result of
14 their inability to carry out the defi activities
15 successfully, but because the defendants have refused to
16 engage in an accounting, it's impossible for us to be sure.
17 We know they stole some, but it is certainly possible that
18 even more than we know was stolen.

19 Celsius did not discover the worst of the
20 defendant's misconduct for a substantial period of time and
21 Celsius remained focused on seeking the voluntary return of
22 its coins. So, for example, the defendants request in
23 September of 2021, the parties agreed to engage in
24 confidential mediation, and we entered into a tolling and
25 standstill agreement. That agreement was extended on

1 multiple occasions, and it didn't lapse until shortly before
2 the petition was filed in this case.

3 Just days before the bankruptcy petition was
4 filed, defendant KeyFi filed a lawsuit in New York State
5 Court. And despite admitting that defendants failed to
6 return coins to Celsius that were, at the time as I
7 mentioned, worth probably hundreds of millions of dollars
8 and still worth tens of millions at least, you know, despite
9 the irrefutable blockchain evidence of their thefts from
10 Celsius, in that lawsuit, defendant actually claims that
11 it's Celsius that somehow owed a profit share to these
12 defendants, despite the fact that they lost enormous sums of
13 Celsius coins.

14 THE COURT: All right. Rather than getting down
15 into all of the weeds, what is the discovery that you wish
16 to take? Was there any discovery, voluntary or otherwise,
17 until this point?

18 MR. HURLEY: Some information certainly was
19 exchanged over time. I'm not sure if characterizing it as
20 discovery is probably going a little bit too far, but there
21 were some requests for information that the defendants made
22 to Celsius, and we provided some data that the defendants
23 said would be helpful in returning coins.

24 Since the claim has been filed, the parties did
25 engage in their initial disclosures, so that initial

1 disclosure exchange on September 30th. Celsius served
2 document requests and interrogatories on September 28th, so
3 those responses are due on 10/28, and that's where things
4 stand on discovery, Your Honor.

5 THE COURT: Okay. And what is your discovery plan
6 going forward?

7 MR. HURLEY: So, the discovery plan calls for --

8 THE COURT: Have you gotten their ESI at this
9 point?

10 MR. HURLEY: Have we gotten their ESI?

11 THE COURT: Yes.

12 MR. HURLEY: Well, there hasn't been any
13 production yet in response to the requests yet, Your Honor.

14 THE COURT: Okay.

15 MR. HURLEY: So the responses -- but that's
16 because the responses aren't due yet. They're not due until
17 10/28.

18 THE COURT: Was there an exchange of information
19 in connection with the mediation?

20 MR. HURLEY: No, there was not an exchange of
21 information in connection with mediation.

22 THE COURT: All right. Okay, anything else you
23 want to tell me?

24 MR. HURLEY: A couple of modifications to the
25 ordinary schedule that Your Honor has typically in

1 adversaries, but I think they're pretty self-explanatory, so
2 happy to answer any questions you have. And with that,
3 that's it.

4 THE COURT: All right, Mr. Roche.

5 MR. ROCHE: Yes, Your Honor. I just want to --
6 don't want to get into all the facts of the case. Mr.
7 Hurley is right. Prior to Celsius declaring bankruptcy, we
8 did file an action seeking to -- breach of contract under,
9 there's two relevant agreements, both executed December 31,
10 2020: an asset purchase agreement from Celsius KeyFi of
11 KeyFi, and a services agreement in which KeyFi agreed to
12 provide certain defi and staking activities for Celsius.

13 This dispute, as it was initially filed by KeyFi
14 against Celsius is properly breach of contract dispute.
15 Celsius KeyFi on one hand is claiming that assets are owed
16 back to it. Our position has been all along is that assets
17 under the accounting that was owed and was supposed to be
18 performed by Celsius, assets are -- KeyFi is owed payment
19 for the profits that it delivered back to the company.

20 Section 7.1(a), Mr. Hurley's claiming that there
21 are -- my clients didn't engage in the accounting. But
22 under the relevant contracts at issue in this case, it was
23 Celsius that was responsible for the accounting. Celsius
24 was aware of all the accounts that KeyFi used to manage its
25 crypto assets, and it wasn't just Celsius that was aware;

1 most of the crypto world was able to follow publicly the
2 crypto wallets that were being used to engaged in the
3 various defi and staking activities.

4 So the idea -- the framing of this case as some
5 form of theft, secret theft on behalf of KeyFi and Stone is
6 just not in accord with both the facts and what is publicly
7 known about --

8 THE COURT: All right, let me ask you some
9 questions.

10 MR. ROCHE: Yes.

11 THE COURT: You had filed a motion to dismiss the
12 original Complaint. The motion to dismiss was filed on
13 September 22nd. On October 13th, Mr. Hurley filed an
14 Amended Complaint and there's been no response to the
15 Amended Complaint yet. So what are you going to do in
16 response to the Amended Complaint?

17 MR. ROCHE: We intend to file a motion to dismiss
18 most of the claims. And I believe, Your Honor, while we're
19 not fully -- that motion to dismiss isn't fully drafted, it
20 will involve many of the same legal issues that the first
21 motion to dismiss covered.

22 THE COURT: When will you be filing your motion to
23 dismiss?

24 MR. ROCHE: The 20 days from the date it was
25 filed, I don't have that date in front of me, but roughly

1 within two weeks.

2 THE COURT: All right. Mr. Hurley, are you
3 removing the state court action to the bankruptcy court?

4 MR. HURLEY: We didn't believe it was necessary,
5 Your Honor, but if that's something you'd like us to
6 consider, we will do that.

7 THE COURT: Well, I haven't seen whether the claim
8 -- I just, I want all the issues resolved in one proceeding.
9 So if there are issues in the state court action that are
10 not in the federal court action, you ought to seriously
11 consider -- I don't want to find out later in this process
12 that there are other issues there in a state court
13 Complaint.

14 Obviously, I've extended the Debtors time to
15 remove actions; this is obviously one of those. So you
16 ought to consider -- are there issues that ought to be dealt
17 with all in one sweep.

18 MR. ROCHE: We will consider that, Your Honor.

19 THE COURT: All right. Let me make clear to both
20 of you, I think this should be clear from your proposed case
21 management order in any event. I do not -- I expect
22 discovery to go forward full-bore whether or not there is a
23 motion to dismiss some or all of the claims, so motions to
24 dismiss do not have any effect on discovery before me, so I
25 expect the parties to go forward expeditiously with respect

1 to discovery.

2 Anything else I ought to know about the actions,
3 Mr. Hurley, or what's your plan for moving forward is?

4 MR. HURLEY: It's all in the plan, Your Honor. I
5 mean, we will, of course --

6 THE COURT: Okay, that's fine. What I would ask
7 you to do is there is appropriately in Paragraph 10 a blank
8 for the next case management conference. Typically, what I
9 want is within a week to two weeks before the end of fact
10 discovery, this be calendared for the next case management
11 conference.

12 You and Mr. Roche should confer about a date. It
13 does not need to be a date when we're having an omnibus
14 hearing; it can be, but it doesn't need to be. And get a
15 date from my courtroom deputy, Deanna Anderson, for the next
16 case management conference, okay?

17 MR. HURLEY: Understood, will do.

18 THE COURT: All right, and do that expeditiously.
19 Then revise the -- once you get that date from Deanna, just
20 submit a new case management scheduling -- call it case
21 management scheduling order No. 1. Include that day. I
22 think that's the only date that has to be filled -- the only
23 information that needs to be filled in in the form of the
24 order and it'll promptly be entered. Okay?

25 MR. HURLEY: Understood. Thank you.

1 THE COURT: Just give me one more second. All
2 right, let's leave it at that. Okay, thank you very much.

3 MR. HURLEY: Thank you, Your Honor.

4 THE COURT: I think those are the only things on
5 the agenda. There are some adjourned items. We'll get to
6 that when they come up on the hearing.

7 I just want to reiterate. With respect to any
8 motions that any parties in interest wish to file, you need
9 to (a) confer with the procedures order with respect to
10 hearings and also speak with my courtroom deputy, Deanna
11 Anderson, about getting them on the calendar.

12 All right. Does anybody else have anything they
13 want to raise for today? Mr. Koenig, were you raising your
14 hand?

15 MR. KOENIG: Your Honor.

16 THE COURT: We were going to deal with the fee
17 examiner issues. I see Mr. Sontchi on the screen as well.

18 MR. KOENIG: Yes. Thank you, Your Honor.

19 THE COURT: Okay. Is there anything other than
20 the fee examiner issues?

21 MR. KOENIG: No, Your Honor.

22 THE COURT: All right. It should be no secret
23 because I've made this point not in this case but in another
24 case. I'm not a fan of fee examiners; that's my starting
25 point, but this may be different, so we'll start with that.

1 So let me turn to Miss Cornell because it's
2 usually the U.S. Trustee's Office that is the proponent for
3 a fee examiner, so let me hear from you first, Miss Cornell.

4 MS. CORNELL: Thank you, Your Honor. This is
5 Shara Cornell again appearing for the Office of the United
6 States Trustee. This is a large case. Your Honor
7 identified it earlier: There are a lot of professionals
8 employed in this case.

9 So far, we've only seen two monthly fee
10 applications filed. The Debtor filed one for two weeks and,
11 you know, it was roughly several million dollars and quite
12 voluminous. A neutral party un beholden to any of the
13 constituents -- to any constituency is in a good position to
14 make that review and, at the same time, it will benefit the
15 estate by virtue of having an independent examiner reviewing
16 those fees and saving those fees and costs for the estates.

17 And we have spoken with both the committee and the
18 Debtors, and they are both in support of that. In light of
19 the large fees that are forthcoming, we're all in support of
20 that.

21 Thank you, Your Honor.

22 THE COURT: Okay. From the Debtor, Mr. Koenig,
23 are you going to address it?

24 MR. KOENIG: Yes, Your Honor, thank you. I'll
25 just be very brief.

1 In a different case, you know, we may have a
2 different position, but as Ms. Cornell suggested and you
3 suggested, Your Honor, these cases are unique, they're very
4 large, there are a number of professionals in the case. We
5 think that it would speed the review process and be
6 beneficial in this particular matter given the uniqueness
7 and the complexity of these cases, so we support the
8 proposal of the United States Trustee's Office.

9 THE COURT: All right. Mr. Pesce.

10 MR. PESCE: Yes, thank you. For the committee,
11 Miss Cornell reached out to us a couple of weeks ago with
12 the idea. We discussed it on our side. We don't oppose the
13 appointment of a fee examiner in --

14 THE COURT: That didn't sound overwhelmingly in
15 support.

16 MR. PESCE: I mean, I don't think we -- I mean,
17 we're not -- we weren't proactive waving our arms for it,
18 but we don't oppose it in this case and, you know,
19 especially now that we understand the parameters under which
20 Mr. Sontchi will be operating if approved.

21 THE COURT: Mr. Sontchi, do you want to be heard?
22 You need to unmute. Go ahead, Chris. Excuse me.
23 Obviously, I've known Mr. Sontchi for many -- we were in
24 baby judge's school together but go ahead.

25 MR. SONTCHI: And you've aged better than I have,

1 Your Honor.

2 No, I think this is -- I think that I view my role
3 here to keep an eye on costs. That's always the role of a
4 fee examiner. This case, I think there's so many moving
5 parts, there's so many possibilities for rabbit holes and
6 detours and repetition of effort among the various parties
7 that I think it makes a good sense to have a fee examiner.
8 Obviously, I have a vested interest in saying that, but I'm
9 willing to serve or not serve at Your Honor's pleasure.

10 THE COURT: Are you seeking to use anyone to help
11 you in this task?

12 MR. SONTCHI: Yes, I am, and she's online.
13 Elizabeth Stadler of Godfrey Kahn, Your Honor.

14 THE COURT: All right.

15 MR. SONTCHI: Katherine Stadler. I apologize,
16 Katherine Stadler.

17 MS. STADLER: That's okay. Hello, Judge.

18 THE COURT: Hello, Miss Stadler.

19 MS. STADLER: Hi. Well, Judge Sontchi --

20 THE COURT: It's a monumental task.

21 MS. STADLER: Yes, yes. Judge Sontchi approached
22 us about taking on this engagement. And I believe he did so
23 because of our representing a fee examiner, independent fee
24 examiner, in the Energy Future case, which was before Judge
25 Sontchi and that, likewise, was large and complicated and

1 involved a lot of fees.

2 We have experience in handling these matters.

3 Right now, I represent the fee examiner in the Puerto Rico
4 insolvency proceeding, so we have the capability of managing
5 large volumes of fee data, and we also have experience
6 identifying issues that are worth spending time looking into
7 and others that may be technical compliance issues but don't
8 really add much value to the fee examination process.

9 Obviously, if Judge Sontchi is appointed, we would
10 serve as his counsel and we would do only that which he asks
11 us to do. And we will, if Judge Sontchi is appointed and
12 wishes to proceed with your firm's retention, we'll file the
13 usual retention papers and disclosures and that sort of
14 thing. So we're not seeking to jump the gun on any of that,
15 but we're willing and able and have the capacity to take on
16 this task should the Court deem it appropriate.

17 THE COURT: And how many people do you expect to
18 use in connection with the work on this?

19 MS. STADLER: There are -- well, the list of
20 professionals right now is relatively small. Typically, we
21 assign three or four professionals to a fee review attorney,
22 someone junior to me that works under my supervision, so I
23 would anticipate probably two to three associates. And then
24 we have a paralegal and a data specialist who helps maintain
25 our fee review database, so I would think it would be a core

1 team of five or six people.

2 THE COURT: Let me ask Mr. Sontchi -- I can't get
3 used to saying that.

4 MR. SONTCHI: Yeah. I'll remind Miss Stadler,
5 there's only one judge on the line.

6 MS. STADLER: Sorry.

7 THE COURT: In talking with Miss Stadler, do you
8 have any specific requests of the professionals who will be
9 submitting fee statements in terms of the breakdowns that
10 you want to see.

11 Look, here's why -- I am going to grant the
12 application. I'm not a fan of fee examiners, and that's
13 because I sometimes think that they feel they have to earn
14 their substantial fees by whacking down the fees of other
15 professionals, justified or otherwise.

16 I am confident that you will exercise the
17 appropriate judgment, Judge Sontchi. But I just -- what I
18 would hope is if you have -- you're the fee examiner -- if
19 you have specific formats or, you know, information that you
20 want to be included, I want all of the professionals who are
21 submitting fee applications to understand exactly what those
22 are so there isn't unnecessary back and forth. You go
23 through the review, and you decide, well, they didn't
24 provide X to us, we want to see X. I want to make sure that
25 you have an opportunity to prepare appropriate guidelines,

1 so people understand exactly what you want to see.

2 MR. SONTCHI: So, Your Honor, speaking with Miss
3 Stadler and talking about this ahead of time, our first
4 order of business is actually, we're going to arrange to
5 meet with the parties that are going to be submitting fee
6 applications. In addition, I expect -- I'd also like to
7 meet with the two ad hoc committees just to hear what their
8 concerns might be with the fees.

9 And after we have those meetings, we're going to
10 develop a memorandum that will lay out for the parties who
11 are submitting fee applications, various things that we need
12 in order to do our job and guidelines for them to think
13 about when they submit their fee applications in the first
14 place to sort of get ahead of the curve and, hopefully,
15 avoid a lot of back and forth or, god forbid, litigation in
16 connection with the fees, so we're very much focused on
17 that.

18 THE COURT: Okay. Is there anybody else who
19 wishes to be heard with respect to the application for
20 appointment of a fee examiner?

21 All right. The application is granted, and I
22 think it really is important, Mr. Sontchi, that you and Miss
23 Stadler communicate with all the professionals who are
24 submitting applications so you're all on the same pages,
25 exactly what information you want to see, the format you

1 want to see it in, and hopefully avoid a lot of back and
2 forth. There will be, you'll have questions when you review
3 applications, there always are.

4 You know, I have many times expressed from the
5 bench, it's the least enjoyable part of my job are reviewing
6 fee applications. Nevertheless, I've been resistant to
7 having fee examiners in cases. It's just added a level of
8 further expense and complication.

9 So, Miss Cornell, is there a form of order that
10 you're going to submit, has it been submitted? I haven't
11 seen it if there is.

12 MS. CORNELL: Sure, Your Honor. I can resubmit
13 that to you this afternoon.

14 THE COURT: Okay, all right. Thank you very much.
15 All right, is there anything else that we need to take up
16 today?

17 MR. KOENIG: Not from the Debtors, Your Honor.
18 Thank you.

19 THE COURT: From the committee?

20 MR. HERSHEY: No, Your Honor.

21 THE COURT: All right.

22 MS. CORNELL: Your Honor, this is Shara Cornell.

23 THE COURT: Go ahead, Miss Cornell. Yeah, go
24 ahead.

25 MS. CORNELL: I just wanted to circle back. You

1 had mentioned earlier that you would like a statement from
2 the United States Trustee regarding the sealing motion of
3 the proposed equity committee. I was just wondering when
4 you would like that statement filed?

5 THE COURT: Have you seen the materials that they
6 want to file? You know, the proposed equity committee got a
7 copy from the Debtor; the Debtor wants it sealed. Have you
8 seen the material?

9 MS. CORNELL: I received the materials late
10 yesterday, Your Honor, yes.

11 THE COURT: When will you be in a position? I
12 guess put it this way. I would like to see it by Monday at
13 noon. I'm not expecting anything very long. It seemed to
14 me, I think it was in F(1). I had no problem about that
15 because I understood that that had not been circulated.

16 It was the two presentations that did give me
17 pause because, quite frankly, who got them, were they
18 subject to any confidentiality agreements, et cetera. And
19 even if they are, that doesn't necessarily mean they get
20 sealed. They may be subject to a confidentiality agreement
21 with private parties, but it may nevertheless include
22 information that should be part of the public record here.

23 MS. CORNELL: Okay, thank you. I can do that,
24 Your Honor, Monday at noon.

25 THE COURT: Thank you very much.

1 MS. CORNELL: Thank you.

2 THE COURT: Okay. Mr. Herrmann, I see your hand
3 raised.

4 MR. HERRMAN: Yes. I mean, I can submit something
5 by noon Monday too. I just wanted to say that I objected to
6 the very, very short timeline and also, you know, I may want
7 to attempt to gain access to these documents. And
8 generally, I opposed -- you know, I'd like to see more
9 reasons about why redaction is appropriate on such a short
10 timeline and just redaction in general.

11 I think in general, we should have things be
12 public, you know, in the public record and, you know,
13 creditors need to see these documents. You know, whether
14 this committee is granted is kind of existential.

15 THE COURT: I'm saying this only half -- well, I'm
16 saying it seriously. I mean, I have very strong views about
17 public access to all court records, anything used by the
18 court. Again, I said this earlier, I'm not sure I'm going
19 to rely on any of that in reaching my decision.

20 I think a lot of account holders weren't very
21 happy with my opinion with respect to sealing. So, you
22 know, they can't all have it both ways: If they want their
23 information sealed, but if somebody else wants to seal
24 something, they don't want it sealed. I do have -- I've
25 written a lot of opinions. I have strong opinions about

1 what should be sealed, what shouldn't be sealed.

2 Miss Cornell, did you want to be heard again? I
3 see your hand up.

4 MS. CORNELL: Yes, Your Honor. I have one further
5 point with respect to the privacy ombudsman appointment.

6 THE COURT: Yes.

7 MS. CORNELL: Should we plan on appointing a
8 privacy ombudsman in the immediate future or will there be a
9 forthcoming order from Your Honor?

10 THE COURT: Let me put it this way. I think there
11 will be a forthcoming opinion hopefully by early next week
12 with respect to the bidding procedures motion. If it's
13 granted, you ought to expect it's going to include a
14 provision requiring the appointment of a consumer privacy
15 ombudsman, but I haven't ruled yet.

16 I made it pretty clear that, particularly in the
17 circumstances of this case, I do think it would be -- if
18 there are bidding procedures, if anyone's buying these
19 assets, whatever the Debtors' existing privacy policy is, I
20 would want a consumer privacy ombudsman to be part of that
21 process and reviewing it.

22 So if I grant it, if I grant the motion to approve
23 the bidding procedures, you can expect it's going to include
24 a requirement for a consumer privacy ombudsman.

25 MS. CORNELL: Got it. Thank you, Your Honor.

1 THE COURT: Okay. Anybody else wish to be heard?

2 All right, we are adjourned. Thank you very much,

3 everybody.

4 (Whereupon these proceedings were concluded at

5 11:48 A.M.)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: October 25, 2022